SENATE—*Friday, September 16, 1988*

(Legislative day of Wednesday, September 7, 1988)

The Senate met at 9:30 a.m., and was called to order by the Honorable BOB GRAHAM, a Senator from the State of Florida.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Out of the depths have I cried unto thee, O Lord.

Lord, hear my voice: let thine ears be attentive to the voice of my supplications.—Psalm 131:1-2.

Merciful Father, with heavy hearts we hear the news of suffering people in the path of Hurricane Gilbert, in Bangladesh, as well as multitudes of others who suffer oppression, homelessness, hunger, disease. As we enjoy the comfort of beautiful weather, pleasant surroundings, the blessing of work and friends, more than enough to eat, hear our prayers for those who are hurting in ways we find impossible to comprehend. Give us thankful hearts, sensitivity to those who hurt, and the grace to respond to human need when we are aware of it and the opportunity is available.

Deliver us from selfishness, indifference and ingratitude, we pray in His name who is love incarnate. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 16, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BOB GRAHAM, a Senator from the State of Florida, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

RESERVATION OF LEADER TIME

Mr. BYRD. Mr. President, I thank the Chair. I ask unanimous consent that the time of the two leaders be reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Wisconsin.

ARMS CONTROL WILL BRING A BETTER LIFE FOR AMERICANS

Mr. PROXMIRE. Mr. President, this is the fourth in a series of speeches this Senator is delivering on why the future will be better for Americans even if the country suffers severe recessions or even depression. Today I will discuss the safer future for our country because of progress in arms control—both nuclear and conventional. The bright side of nuclear weapons is that they have built a massive roadblock in the way of another world war. A major all out war involving the superpowers would obviously bring the total destruction of both countries. Such a war would spell swift and certain death to most persons residing in the United States and the Soviet Union. Neither nation could win. There would be only losers. Freedom would be among the first casualties. We know that. The Soviets also know it. This and this alone is what has kept the peace in Europe for more than 40 years—the longest period of European peace in more than four centuries. The great good news is that the terrible and certain destruction of nuclear war is likely to keep the peace for generations to come. Unless, unless, unless the nuclear technology achieves a breakout that persuades one side or the other that it can attack with such assured precision that it can totally eliminate the nuclear capability of the adversary.

At this moment the technology arms race that would bring on weapons that could strike over oceans and continents at the speed of light—186,000 miles per second—races on. As the technology of nuclear weapons proceeds mostly in the guise of developing defenses against the adversary nuclear weapons, both sides advance weapons that are more complex, more hair trigger, more susceptible to human error, and that could bring on a nuclear holocaust.

Into this dangerous situation comes arms control. Arms control can and should slow and then stop the onrushing technological race to world destruction. Here is how: First and above all the superpowers need an agreement to stop the quintessential heart of the technological nuclear arms race, nuclear weapons testing. Right now the United States and the Soviet Union are progressing but slowly. The superpowers are conducting a joint verification experiment. In the December 1987 summit agreement in Moscow, the two nations agreed on conducting nuclear tests on the territory of each, which tests are observed with monitoring devices by experts from both countries. The United States and the Soviet Union have differed on which method of detection and monitoring is preferable. The tests may settle that difference. If they do then the threshold tests ban treaty that was signed but not ratified back in 1974 and the Peaceful Nuclear Explosions Treaty of 1976 may at long last win ratification. Is this progress? Not much. But it just may begin to erode the argument that we must not sign an agreement with the Soviet Union to stop nuclear weapons testing because the Soviets would cheat and we could not detect their cheating. An agreement to end nuclear weapons testing is the prime prerequisite to making any reduction in the number of nuclear arms mean something. Why is it so necessary to stop technological progress in nuclear weapons? Because without a halt in nuclear weapons technology a 50-percent or even a 90-percent reduction in nuclear warheads or megatonnage could be overcome by the improvement testing could help bring to the accuracy, penetration ability, and the invulnerability of a far smaller nuclear weapon arsenal. The bad news is that we have been progressing much too slowly. But the good news, and it is very good news, is that we are talking and making progress—however slow.

The spread or proliferation of nuclear weapons has been the nightmare that has concerned thoughtful fighters for peace ever since Hiroshima. So far we have been far more successful

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

than was thought possible 25 years ago. Lately there has been further progress on a few fronts. For example, Saudi Arabia, following criticism of its purchase of ballistic missiles from China has now told the United States it could sign the Nonproliferation Treaty. Also, South Africa, long a holdout against agreeing to comply with the Nonproliferation Treaty, has now agreed to sign it. Keep in mind that the Nonproliferation Treaty requires signatories to permit unannounced international inspection to assure that plutonium and uranium is not being processed into the essential weapons grade basis for nuclear weapons. The overwhelming majority of nonnuclear nations that have the economic and scientific capacity to produce nuclear weapons have now signed the treaty.

And arms control is reaching out beyond nuclear weapons. There has been progress toward a chemical weapons treaty. The Soviet Union and the United States have both provided detailed information about their chemical stockpiles and storage locations. They have also allowed international teams of inspectors to tour a chemical facility. Of course, the big enchilada for opening the economic future to a better life for Americans is an agreement with the Soviet Union to mutually and verifiably reduce conventional forces. Now both sides have agreed on the first step toward conventional force reductions. This is an exchange of accurate data on troop strengths in Europe and especially the use of onsite inspections to resolve discrepancies between estimates.

What all of this adds up to is that while arms control has moved ahead slowly and cautiously the international community led by the super-powers are making progress toward a world in which the major power peace of the past 43 years will continue for decades, perhaps centuries to come. This would permit a better world for Americans regardless of the economic trauma of recession or depression that may ensue in coming years. So we can look forward not just to smile through our tears, but to Americans living out their lives in peace, without the anguish of war.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

ATMOSPHERIC CONTAMINATION—V

Mr. STAFFORD. Mr. President, few chemicals have enjoyed the success and popularity of chlorofluorocarbons, better known to most of the world as freons. And, for good reason.

Chlorofluorocarbons—CFC's for short—seem to be a miracle chemical. They are stable, nontoxic substances that can be put to thousands of different uses without fear that they will burn, explode, or poison anyone or anything.

In fact, they seem to have only one shortcoming—they destroy the ozone layer in the stratosphere that shields life on Earth from the deadly radiation of the Sun.

The ozone layer is often referred to as a shield, but it is in reality a zone about 35 kilometers thick in which ozone molecules are thinly spread. There are so few of these molecules of ozone that if they were compressed, the layer would be only as thick as a plastic trash bag—about 3 mils.

As thin as this layer may be, it is all that stands between life on Earth and the searing radiation of the Sun, which is mainly ultraviolet light. An unprotected cell exposed to ultraviolet light can be literally exploded on contact. Even filtered by the ozone shield, ultraviolet light is still potent enough to blister skin, disrupt plants, and destroy small marine organisms.

The Environmental Protection Agency [EPA] estimates that a 10-percent depletion of the ozone layer would cause nearly 1.9 million new cases of skin cancer a year, including 65,000 cases of melanoma, which is frequently fatal.

Scientists are also concerned that ultraviolet light might cause damaging changes to our biological ecosystems that sustain all life on Earth.

The ozone depletion theory was first advanced in 1974 by two California scientists, Drs. F. Sherwood Roland and Mario Molina, who concluded that CFC's released into the atmosphere cause the depletion.

That's bad news, because the ozone in the stratosphere screens out more than half of the ultraviolet radiation that would otherwise reach the surface of the Earth.

Roland and Molina found that CFC's survive all of the destruction processes found at lower levels, but are shattered by the ultraviolet light when they reach the stratosphere. The chlorine atoms that are freed by the destruction of the CFC's then go to work destroying ozone molecules.

Since CFC's have a life of up to 150 years, which means that, even if we had heeded the 1974 warning of Roland and Molina, we would still face more than a century of ozone depletion.

But, we would not have been prepared for the surprise that astounded even our best scientists.

Even those most perceptive scientists who agreed with the ozone depletion findings of Roland and Molina anticipated a slow reaction rate in gas phase chemistry of the atmosphere.

But, the extreme cold of the Antarctic—the coldest place on our planet—froze the water vapor in the air and formed clouds of ice particles in the stratosphere. These are known as polar stratospheric clouds and their ice particles provided a solid medium that vastly increased the speed of the reaction between the chlorine and ozone.

Thus, the clouds made possible the runaway reaction that created the huge hole in the ozone layer over the Antarctic. Once again, we have been reminded that nature does not always behave as mankind would like it to.

Although there were early doubters of the Roland and Molina findings, there is now virtually no doubt that CFC's do destroy the ozone layer and that a runaway reaction happened over the Antarctic because of the extreme cold. A question that remains is whether such runaway reactions may occur elsewhere.

I will describe evidence in future talks that this may, indeed, be taking place at this instant—not thousands of miles away in the Antarctic, but in my home State of Vermont and throughout the rest of the Appalachian chain of mountains and the States in which they are situated.

Mr. President, I ask unanimous consent a chart showing production and release of chlorofluorocarbons from 1931 to 1984 be printed in the RECORD.

There being no objection, the chart was ordered to be printed in the RECORD, as follows:

PRODUCTION AND RELEASE OF CHLOROFLUOROCARBONS, 1931–84

[In thousand metric tons]

	CFC–11		CFC–12	
	Production	Release	Production	Release
1931	0	0	0.5	0.1
1936	.1	0	1.7	.5
1941	.3	.1	6.3	3.0
1946	.7	.6	16.6	13.9
1951	9.1	7.6	36.2	32.4
1956	32.5	28.7	68.7	56.1
1960	49.7	40.5	99.4	89.1
1961	60.5	52.1	108.5	99.7
1962	78.1	65.4	128.1	114.5
1963	93.3	80.0	146.4	133.9
1964	111.1	95.0	170.1	155.5
1965	122.8	108.3	190.1	175.4
1966	141.0	121.3	216.2	195.0
1967	159.8	137.6	242.8	219.9
1968	183.1	156.8	267.5	246.5
1969	217.3	181.9	297.3	274.3
1970	238.1	206.6	321.1	299.9
1971	263.2	226.9	341.6	321.8
1972	306.9	255.8	379.9	349.9
1973	349.1	292.4	423.3	387.3
1974	369.7	321.4	442.8	418.6
1975	314.1	310.9	381.0	404.1
1976	339.8	316.7	410.7	390.4
1977	320.5	303.9	382.8	371.2
1978	308.9	283.6	372.1	341.3
1979	289.5	263.7	357.2	337.5
1980	289.6	250.8	350.2	332.5
1981	286.9	248.2	351.3	340.7
1982	271.4	239.5	328.0	337.4
1983	291.7	252.8	355.3	343.3
1984	312.4	271.1	382.1	359.4

0 = zero, or less than 90 metric tons.
Note: For additional information, see Sources and Technical Notes.
Source: Chemical Manufacturers Association.

Mr. STAFFORD. I thank the Chair. I will continue these discussions.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

COMMENDING ROBERT T. STAFFORD

Mr. LEAHY. Mr. President, I wish to commend the distinguished senior Senator from Vermont for the series of speeches he has been giving on the environment. I will speak further about this at a later time, but it is typical of my distinguished senior colleague that he has set out very carefully, seriously, and methodically and with great expertise his concerns about the environment.

I would commend all Senators to read or listen to what Senator STAFFORD has been saying. He gives a warning about the dangers to our environment that all of us would do well to heed. They are warnings based not on casual observance, but on a lifetime of experience and his experience here especially in the Senate where he has certainly been one of the leading environmentalists of this century.

So I commend the distinguished senior Senator from Vermont for doing this as he finishes a distinguished career in the Congress. He leaves us, with these statements, just one more part of the legacy that Senator STAFFORD has given on behalf of his native State of Vermont, a legacy that we can all share on both sides of the aisle.

Mr. STAFFORD. Mr. President, if the Senator will yield only briefly, I will just say how much I appreciate his very kind words this morning, the words of my very dear friend, as well as colleague, from Vermont. I am very grateful for them. I thank him.

BUSH ON DUKAKIS' FARM POLICY

Mr. LEAHY. Mr. President, I notice that as we vote here in the Senate, or as we come into the Senate for different things, most Senators will take a moment to stop by the wire service reports and check the AP and UPI wires. You can imagine what kind of a reaction there might have been if they had picked up a wire service report and read a story that started with this lead: "George Steinbrenner charges that Tip O'Neill is anti-Red Sox."

No one would take that kind of a statement seriously. Maybe it is obviously wrong. We would probably check the date to see if it had an April 1 date on it. But it would be more than wrong. Such a statement would actually stand the truth on its head.

I am afraid the permanent Presiding Officer of this body has made a similar statement. Vice President GEORGE BUSH has recently made just such an erroneous Alice-in-Wonderland statement about Michael Dukakis' farm policy.

Vice President BUSH recently implied Governor Dukakis might support a grain embargo. He based this statement on a news story that claimed a Dukakis aide said the Governor might reexamine the use of an export subsidy program in selling grain to the Russians.

GEORGE BUSH is dead wrong on this. Michael Dukakis has told me face to face that he is opposed to grain embargoes. As chairman of the Senate Agriculture Committee, I was quite interested in what his position might be. I went up to Massachusetts, sat down with him and asked him. He was most emphatic, as he has been throughout his campaign, that he opposes grain embargoes. This is something GEORGE BUSH knows and his campaign knows. But GEORGE BUSH was more than dead wrong about Mike Dukakis' position on embargoes.

In fact, his own administration, the Reagan-Bush administration, fought the enactment of and, even after it became law, refused to use the very farm export program that GEORGE BUSH mistakenly claimed Michael Dukakis opposed. So everybody understands what the program is, it is called the Export Enhancement Program.

It was Vice President BUSH's administration, not Mike Dukakis, which called the Export Enhancement Program "totally counterproductive."

It was Vice President BUSH's administration, not Mike Dukakis, which called the Export Enhancement Program "highly objectionable."

It was Vice President BUSH's administration, not Mike Dukakis, which said the Export Enhancement Program may be contrary to the national security interests of the United States.

Even after the Congress established the Export Enhancement Program over this administration's strong objection, Vice President BUSH's administration refused for months to use the program to promote grain sales to the Soviet Union.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. LEAHY. I ask unanimous consent to proceed for 4 more minutes.

Mr. MCCONNELL. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. MCCONNELL. Let me just say to my friend from Vermont, the reason for my objection, it is the understanding of the Senator from Kentucky the way of handling morning business was on the basis of arrival.

My friend from Vermont either intentionally or unintentionally jumped in front of the Senator from Kentucky, who has been sitting here for some time. I will be happy to withdraw my objection provided that I get my 5 minutes.

I ask unanimous consent that the Senator from Kentucky be allowed to proceed for 5 minutes at the completion of the remarks of the Senator from Vermont.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. HARKIN. I object. Might I inquire of the Presiding Officer how long morning business goes today?

The ACTING PRESIDENT pro tempore. Morning business is scheduled to be completed at 10 a.m.

Mr. HARKIN. Might I also inquire further of the Senator from Kentucky how long he wants to speak?

Mr. MCCONNELL. Five minutes, I just asked in the UC.

Mr. HARKIN. I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Vermont will proceed for an additional 4 minutes to be followed by the Senator from Kentucky for 5 minutes.

Mr. LEAHY. I will try to be brief, Mr. President. I note to the Senator from Kentucky it has been my experience we have gone back and forth across the aisle during morning business. First the one Republican and then one Democrat, one Republican. That is why I assumed we were doing it the way we always had.

While the administration refused for months to use the program to promote grain sales to the Soviet Union, we saw the United States share of Soviet wheat import go from 21 percent to 1 percent. That is the Reagan-Bush position on trade embargoes. It was, in effect, a de facto trade embargo.

When this decision was reviewed in a contentious meeting in the Oval Office, according to the Washington Post, the Secretaries of State, Treasury, Agriculture, and Defense were there; the head of the CIA, OMB, and the U.S. Trade Representative were there. GEORGE BUSH was not.

I do not know personally whether he was there or not. I think it is only fair to ask, if you were there, what position, Mr. Vice President, did you take? If you were not there, where were you when your own administration was making its toughest foreign policy agriculture decision?

As I have been watching this Presidential campaign in recent weeks, I have been outraged and, at times, saddened. I have been outraged to see the patriotism of an outstanding American attacked because he believes that a democratic nation should respect the religious convictions of its citizens.

I have been saddened to watch the most negative Presidential campaign that I can remember in my lifetime.

Political debate is the lifeblood of a democracy. When political debate is poisoned by error, half-truth, and innuendo, the whole body politic suffers.

I ask Mr. BUSH to check his facts next time before he speaks.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky is recognized.

THE ANTICORRUPTION ACT OF 1988

Mr. McCONNELL. Mr. President, yesterday I joined my colleagues, Senators BIDEN, THURMOND, METZENBAUM, SIMON, and DECONCINI in introducing S. 2793, the Anticorruption Act of 1988. Mr. President, the Biden-McConnell bill represents a three-pronged offensive against corruption at all levels of our society—by expanding Federal jurisdiction and increasing penalties in election fraud cases, by restoring the authority of the Federal Government to investigate and prosecute corrupt local officials, and by restoring the Federal Government's law enforcement role against white-collar crime and other private fraud.

Let me just take a minute to discuss how this bill came about as a way of explaining why it is so vitally important.

Mr. President, we sometimes think of election fraud as a bygone thing in this country but it is not. Unfortunately, in my State it has been a longstanding tradition, one that we do not talk about with any great pride. Last fall, the Louisville Courier Journal, one of our two statewide newspapers, did an extensive study on election fraud in Kentucky. It found rampant abuse, something we all suspected anyway. We have seen it over the years—vote-buying, intimidation at the polls, contributions for contract deals, and multiple voting practices. It also found that many of these offenses were committed with the assistance of officials who were supposed to keep the process clean, that is, the local election supervisors.

Now, since that exposé, new cases of vote fraud have been rolling in at an alarming rate. Obviously, the exposé did not stop anybody. Last month, one woman was found to have voted three times and although she cast a vote for her dead husband, she never even bothered to vote in her own name. In a recent roundup of corrupt officials, a local grand jury handed down indictments on three election officers and three vote buyers on 53 counts of election fraud. These offenses were committed after Kentucky's General Assembly enacted the most sweeping antielection fraud measures in its history, earlier this year.

Mr. President, I ask unanimous consent that three recent articles on election fraud in Kentucky appear at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Times (Cumberland Falls) Tribune]

SIX INDICTED IN CLAY CO. ON 53 COUNTS OF VOTE FRAUD

MANCHESTER, KY.—Three election officers and three alleged vote-buyers have been indicted by a Clay County grand jury on 53 counts of vote fraud, a prosecutor said.

The sealed indictments returned Friday stem from a single precinct in last May's primary election, Assistant Attorney General Andrew T. Coiner said, but he would not name the precinct.

Clay is the second county to issue major vote-fraud indictments involving the May primary amid heightened concern about Kentucky election practices.

The Clay County charges included bribing voters, unlawful voter assistance, aiding the impersonation of voters and allowing people to vote more than once, Coiner said.

"We had one lady who voted three times and never once in her own name," Coiner said, adding that one of the names she used was her dead husband's.

"It's unbelievable," he said.

In Knox County, County Clerk Troy Hampton, former Judge-Executive Don I. Bingham, Assistant County Attorney Paul Baker and County Treasurer Jack Ketcham were among more than 20 people indicted in June and July. The charges grew out of accusations in the 86th District state House race among Bingham, incumbent Caroline White, who won the election and Paul F. Lewis.

Friday's indictments grew out of the same House race, as well as allegations in the 21st District state Senate race between incumbent Gene Huff and state Rep. Albert Robinson, Coiner said.

Robinson, who lost the election, filed suit in Clay Circuit Court in June, alleging voting improprieties in six precincts and seeking to have himself declared the winner. He dropped the suit in July after Huff filed counter-allegations.

The 86th District includes seven precincts in Clay County: Manchester, East Manchester, Whites Branch, Harts Branch, Horse Creek, Garrard and Pigeon Roost.

Coiner said investigators have been told of other alleged improprieties in about six other precincts. Additional indictments are expected, he said.

The indictments were sealed to avoid compromising the continuing investigation and revealing the identities of the approximately 50 witnesses who have testified before the grand jury, Coiner said. In addition, he said he hopes those indicted will cooperate and help lead "to the money suppliers or people on up the ladder."

Coiner said he hopes to conclude the investigation by the end of October.

Clay Circuit Judge Clay M. Bishop issued an order Friday designating the grand jury a special grand jury for election matters only and authorizing it to continue meeting until the current investigation is over.

Clay Commonwealth's Attorney B. Robert Stivers, whose office is assisting the investigation, requested the attorney general's office be called in. Stivers declined to comment on the indictments.

Coiner said two voters who were arrested last month for allegedly disobeying a subpoena and failing to appear to testify before the grand jury have since testified after spending five days in the Clay County Jail. However, contempt-of-court charges remain pending against Leon North, 55, and Irene Smith, 37, both of Bluehole, who were released from jail under $500 cash bond each.

CLAY GRAND JURY INDICTS 6 IN VOTE-FRAUD CASE

(By William Keesler)

MANCHESTER, KY.—A Clay County grand jury yesterday indicted six people on vote-fraud charges stemming from last May's primary election.

The indictments were sealed, but Assistant Attorney General Andrew T. Coiner said they contained a total of 53 counts and named three election officers and three alleged vote-buyers from a single precinct.

The charges included bribing voters, unlawful voter assistance, aiding the impersonation of voters and allowing people to vote more than once, he said.

"We had one lady who voted three times and never once in her own name," Coiner said, adding that one of the names she used was her dead husband's.

"It's unbelievable," he said.

Clay is the second county to issue major vote-fraud indictments this year amid heightened concern about Kentucky election practices.

More than 20 people were indicted in June and July on charges related to vote fraud during the May primary in Knox County. They included County Clerk Troy Hampton, former Judge-Executive Don I. Bingham, Assistant County Attorney Paul Baker and County Treasurer Jack Ketcham. The charges grew out of accusations in the 86th District state House race among Bingham, incumbent Rep. Caroline White and Paul F. Lewis.

Coiner said yesterday that the Clay County indictments grew out of the same House race, as well as allegations in the 21st District state Senate race between incumbent Gene Huff and state Rep. Albert Robinson. Robinson, who lost the election, filed suit in Clay Circuit Court in June, alleging voting improprieties in six precincts and seeking to have himself declared the winner. But Robinson dropped the suit in July after Huff filed allegations of his own.

Coiner would not name the precinct involved in yesterday's indictments. The 86th District includes seven precincts in Clay County—Manchester, East Manchester, Whites Branch, Harts Branch, Horse Creek, Garrard and Pigeon Roost.

All seven had lopsided results. White, who won the election, beat Bingham 235-4 in Manchester, 153-6 in East Manchester, 41-5 in Whites Branch, 90-4 in Harts Branch, 59-1 in Horse Creek and 62-5 in Pigeon Roost, according to results listed by the Clay County Election Commission. However, Bingham defeated White 114-21 in Garrard.

Huff beat Robinson 387-24 in Garrard, 215-22 in Horse Creek and 87-15 in Whites Branch, but lost Manchester 105-40 and Pigeon Roost 173-104.

Coiner said investigators have been told of other alleged improprieties in about six other precincts. Additional indictments are expected, he said.

He said yesterday's indictments were sealed to avoid compromising the continuing investigation and revealing the identities of the approximately 50 witnesses who have testified before the grand jury. In addition, he said he hopes those indicted will cooperate and help lead "to the money suppliers or people on up the ladder."

The attorney general's office was called in at the request of Clay Commonwealth's Attorney B. Robert Stivers, whose office is assisting the investigation. Slivers declined to comment on the indictments. Coiner said he hopes to conclude the investigation by the end of October.

Also yesterday, Clay Circuit Judge Clay M. Bishop issued an order designating the grand jury a special grand jury for election matters only and authorizing it to continue meeting until the current investigation is over. The grand jury, empaneled in May to

investigate all crimes in the county, had been scheduled to disband next month.

Coiner said witnesses have presented a vivid picture of corrupt practices. He said the precinct involved in yesterday's indictments had a system that allowed voters to present themselves at the polling place and ask for a particular election officer. An election officer routinely went into the voting booth with voters, even though the law allows an officer to assist only voters who cannot read or write or who are physically handicapped.

Although voters are required to sign a voter-assistance form if they need help, "no voter-assistance forms were filled out in this precinct," Coiner said.

He said testimony showed that the election officer would pull all the levers for the voter. When the two emerged from the booth, the officer would motion to campaign workers outside the polling place that the person had voted the right way. The campaign workers would then pay the voter $10.

Some witnesses said as much as $5,000 may have been spent in that precinct the day of the primary. Coiner said. He said many voters interviewed by investigators were almost totally ignorant of what was on the ballot.

"They don't know the names of candidates," he said. "They don't know whether they're voting for president or dog catcher. I asked one man . . . who was on the ballot that day and he said Wilkinson and Bush."

Gov. Wallace Wilkinson was on the ballot in May and November of 1987, but not this year. Republican presidential nominee George Bush was on the ballot March 8 during the Super Tuesday primary, but not on May 24.

Coiner said two voters who were arrested last month for allegedly disobeying a subpoena and failing to appear to testify before the grand jury have since testified after spending five days in the Clay County Jail. However, contempt-of-court charges remain pending against Leon North, 55, and Irene Smith, 37, both of Bluehole, who were released from jail under $500 cash bond each.

[From the State Journal, Aug. 30, 1988]

VOTE FRAUD ROUNDUP

"It's unbelievable," said Assistant Attorney General Andrew Coiner of a Clay County woman who voted three times, but not once in her own name, in last May's primary. The woman even voted in the name of her dead husband.

However extraordinary the circumstances of the latest round of vote fraud indictments, this time in Clay County, the charges really are not all that unbelievable. They only confirm what news stories and official inquiries have pointed out previously: Elections in some counties and individual precincts in Kentucky are about as honest as elections held in the Soviet Union. They're rigged from the outset and the victor in those counties and precincts is the candidate who is able to buy the most votes.

So far, grand juries in Knox and Clay counties have handed down multiple indictments against county and election officials, vote buyers and sellers, and there is every indication many more similar indictments will be forthcoming.

The pattern is all-too familiar. Absentee ballots are applied for wholesale using often fictitious names. Election officers at precincts routinely enter voting booths with voters to make certain the "right" levers are pulled so the buyer of the vote gets his money's worth. Cash changes hands openly at voting places and, like the Clay County lady, some voters cast ballots here, there and everywhere. Local prosecutors and the Attorney General's Office are hoping soon to begin focusing on those higher up the vote fraud ladder who supply the money and influence to subvert the election process.

Public attention was drawn to widespread vote fraud by a series of stories last year in the Louisville Courier-Journal and by the findings of special commissions set up by the Legislative Research Commission and Attorney General Fred Cowan. Some longtime observers, in Eastern Kentucky particularly, scoffed that vote fraud was so ingrained in certain counties that no amount of tough new laws and changes in voting procedures would have much impact. The blatant way in which election results were manipulated in last May's primary in Knox and Clay counties despite the much publicized stiffening of election laws by the General Assembly would seem to confirm that cynical attitude.

However, in the coming months, as dozens of people in those counties—some of them very important people—are brought before the bar of justice to account for themselves, their example cannot be ignored by others who may have committed vote fraud in the past and are tempted to do so again. In the long run, that may do more to clean up elections in Kentucky than anything yet tried.

Mr. McCONNELL. That indicates the degree of public cynicism about local law enforcement efforts against these kinds of abuses. In fact, the law enforcement record against such cases in our State has been shameful. In all of Kentucky's experience of election fraud over the last several years, only one person has gone to jail, for a 1-day sentence. The fact is that many of the worst offenders are the local officials themselves or the neighbors down the street, and no one sitting on any local jury is going to send these people to jail.

That is why I have said that the only way to clean up the election fraud problem is to have the Federal Government come in, supervise elections with Federal officers, and prosecute offenders under Federal law in Federal Court. That is what Congress did in 1965 when it passed the Voting Rights Act, to protect people's rights to vote even in local elections regardless of race. Ironically, the Government never had to prosecute too many violations of the Voting Rights Act. Simply the declaration that the Federal Government was then involved stopped a lot of those practices. But first, we had to arm the Federal Government with the power to uncover and punish these abuses.

That is what I sought to do when I introduced the Election Fraud Prevention Act last year, to punish all election offenses as Federal felonies, expand the Federal Government's power to investigate fraud and corruption, and authorize Federal law enforcement authorities to supervise State and local elections.

Now, the Biden-McConnell bill, Mr. President, which was introduced yesterday, incorporates that concept but also adds a number of provisions in which the administration is interested. We have before us a bill supported by Attorney General Thornburgh, supported by the chairman of the Judiciary Committee, supported by both conservative Republicans and liberal Democrats. This is, indeed, a bipartisan bill. It ought to pass and it ought to pass soon.

The election fraud area is only one portion of what this public corruption bill seeks to improve. But election fraud is still a serious problem in America, not just in Kentucky but in some of the big cities of the Midwest and the North and in some of the poorer, rural, one-party areas of the section of the country represented by the occupant of the Chair and myself. So it is an ongoing problem and in my judgment it is not going to stop until the Federal Government has some way of becoming involved in the enforcement in antielection fraud laws.

Since I introduced my first election fraud bill, I found that the law enforcement fight against corruption is not limited to vote fraud, but the Federal Government's entire anticorruption enforcement effort has been placed at risk by one recent Supreme Court decision, originating in Kentucky, McNally versus United States. This case held that Federal prosecutors could not use the Federal mail fraud laws to go after public and private corruption, despite the fact that mail fraud for many years has been a vital tool in prosecuting corrupt officials. Essentially, the Supreme Court said that corruption isn't "fraud" unless someone takes tangible property away from someone else.

Mr. President, there may have been some good legal arguments for this decision, but there are 185 Federal corruption convictions on the books right now which are based on mail fraud—all at risk now as a result of the McNally decision. Last November, a Federal court threw out the 10-year-old mail fraud conviction of former Maryland Governor Marvin Mandel—not because the court found Mandel innocent; instead, the court reversed because it no longer had a Federal law on which to convict Mandel. When the Mandel reversal came down, I voiced my concerns about this decision on the Senate floor, and followed up with a guest editorial in the Washington Post.

Mr. President, I ask unanimous consent that my floor statement on that occasion and a copy of my editorial appear in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMENTS ON MANDEL CONVICTION REVERSAL

Mr. MCCONNELL. Mr. President, I would like to call my colleagues' attention to a set of articles which appeared on the front page of the Washington Post today. The news here ought to concern every Member of this body, and I bring it up because I believe we can remedy the situation quickly, through legislation which I introduced only last Tuesday: S. 1837, the Election Fraud Prevention Act of 1987.

First there is the news, which must come as a shock to most of us familiar with the case, that the 10-year-old mail fraud and racketeering conviction of former Maryland Gov. Marvin Mandel was reversed yesterday. As many of us know, Mandel was convicted in what seemed to be an airtight case: Vast amounts of evidence and testimony indicated that Mandel had helped a racetrack get special treatment, in exchange for cash, jewelry, vacations, and other benefits from the track's secret owners.

More shocking than the news of this reversal, however, is the court's reason for granting reversal: It wasn't that Mandel was found innocent of the charges raised against him; in fact, the court basically accepted the evidence of Mandel's racetrack scheme. Instead, the court was compelled to reverse because it could find no Federal law on which to convict Mandel.

Even though there was clear evidence of government corruption, perpetuated through the mails, the court couldn't find any violation of Federal mail fraud statutes—despite the fact that the statute has been used for years to prosecute this kind of corruption, especially against entrenched politicians who can insulate themselves from local investigation.

This denial of justice has its roots in a recent Supreme Court case originating in my home State. In McNally versus United States, the High Court reversed the mail fraud conviction of a high-ranking Kentucky official who had set up a scheme to funnel kickbacks on State contracts to a Shell Co. controlled by the official.

In that decision, the Supreme Court held that Government fraud wasn't really "fraud," because it didn't take tangible property away from anyone. The Court rejected arguments that citizens had a proprietary right to honest Government, saying that Congress' intent in enacting fraud statutes was limited only to ownership rights, not democratic rights. Therefore, if you take someone's money through a fraudulent mail scheme, that's illegal; but if you put the whole Government up for sale, that's not punishable under any Federal law.

Mr. President, not only is this decision outrageous, but it also bodes great harm for the future. It could overturn more than 185 earlier convictions of corrupt public officials that were based on mail fraud. Many predict that the Mandel case is only the beginning of an avalanche of reversals. Further, the McNally and Mandel decisions have tied the hands of the Justice Department in at least 100 Government corruption cases now under investigation.

Last, these cases send a clear message to every Government official and citizen in the land: That if an official can get entrenched, and insulate himself from local investigation, then he can put his position on the auction block without fear of the Federal Government putting him behind bars.

Mr. President, this situation is closely related to another set of circumstances I described last week: The practices of vote buying and voter intimidation that go unchecked and unpunished in State and local elections. Last week, I introduced the Election Fraud Prevention Act of 1987, to clamp down on these ignored crimes against the democratic system.

But this bill also would go a long way toward correcting the McNally problem, by expanding the definition of "fraud" to include violations of Federal and State election laws. I hope that we can schedule hearings on my bill as soon as possible, and hope to work with the Rules Committee to strengthen the McNally provision of S. 1837.

I believe the Federal Government has a compelling interest in weeding out corruption at all levels of government, wherever Federal funds flow. We owe it to our taxpayers, if not to all American citizens, to ensure that government officials do not abuse the democratic process which put them in power.

Therefore, I urge my colleagues to take a careful second look at the Election Fraud Prevention Act of 1987, and work with me to let the courts and the people know that we are serious about stopping corruption in government.

Mr. President, I ask unanimous consent to insert into the RECORD at this time an editorial which appeared in the Paducah Sun yesterday, arguing the need for my bill, S. 1837, and urging quick action to address the very real election problems I have spoken on. So far, the response from my home State has been very positive, and I expect interest in the bill to increase once the repercussions of McNally begin to cause real damage, as they have already with the Mandel conviction.

Mr. President, I also ask unanimous consent to submit for the RECORD the series of articles which appeared in the Washington Post today, on the reversal of Mandel's mail fraud conviction, and on the dim prospects for other convictions of this type.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Paducah Sun, Nov. 12, 1987]

MCCONNELL'S BILL IS WORTH A TRY

Not long ago, a candidate for statewide office met with our editorial board. A couple of weeks earlier, the Louisville Courier-Journal published an eye-opening exposé on election fraud in Kentucky. We asked the candidate, who had survived a hotly contested primary race, if such tales were so.

He told me a story about a county in eastern Kentucky. It seems a top county official invited the candidate to come by for a talk one day during the primary. After conversing with the candidate for awhile, the official said he thought they could get along, and boasted that he could deliver 80 percent of that county's vote to the candidate. The candidate left, obviously pleased.

Then, shortly before the election, the candidate was approached by a person he believed to be an emissary of his new-found supporter. He told the candidate it was time to come up with the money. The candidate asked what he meant. The response was that it was tradition, in return for the support of the county political machine, that money be provided to pay some 100 or so people to "assist" the election effort. The candidate refused to pay. He said he finished last in that county, although he fared pretty well in some surrounding counties and won the statewide race.

To us, that was a rather sobering account. Although the Courier-Journal investigation indicated that the bulk of election fraud and vote buying takes place in eastern Kentucky counties, it is nevertheless a practice that can disenfranchise voters in other parts of the state by swinging close statewide races in favor of the highest bidder. It offends the very concept of democracy.

We know we have at least one person who agrees with us on this: U.S. Sen. Mitch McConnell, R-Ky. Sen. McConnell has told us up front that part of his concern stems from his belief that Republican candidates in particular have been frequent victims of election fraud in Kentucky, and cites examples from his personal experiences as evidence. But that personal motivation aside, we agree with Sen. McConnell's view that the time has come to take some serious steps to do something about the problem, which is by no means limited to rural areas of Kentucky.

That is why we support new legislation Sen. McConnell has introduced that would toughen the penalties for fraud and voter intimidation, and provide an opportunity for federal supervision of polling places.

We emphasize the word opportunity, because voting fraud seems to be limited to a few select regions of the country, and any proposal for nationwide federal supervision of the polls would be unspeakably expensive and offensive to the concept of free elections.

Sen. McConnell's bill would provide that any candidate who is concerned about potential fraud at specific polling places could request that a federal observer be sent to oversee voting activities there. Only in the precincts where such requests are made would there be federal supervision. Sen. McConnell believes such a system would deter voter intimidation and tampering with ballots and vote counts.

Of course, it would not necessarily stop vote buying. To address that problem, Sen. McConnell's bill would amend existing federal anti-fraud laws to make any type of vote buying, selling, or trading of votes for jobs, felonies. It would raise existing penalties ($1,000 fines and up to 5 years in jail for such activity) to $25,000 and up to 10 years in jail.

Because the bill would apply to elections to any government body receiving at least $1,000 in federal money, its provisions would not just apply to statewide races. Elections to city governments and school boards would also be covered.

Sen. McConnell says the mechanics of his bill are inspired by provisions of civil rights laws created to protect the rights of minority voters in the South. As he put it: "We always have worried about civil rights for the minorities. This is a bill that provides civil rights for the majority. . . . this bill will give people the right to cast an unintimidated ballot and let the winner truly be the winner."

We don't see Sen. McConnell's bill as a total cure for the problem, and neither does he, but we agree that it is a step in the right direction.

As we told Sen. McConnell, we will favor almost any reform measure that will serve to make elections more honest and fair, so long as the reforms are not unduly expensive and do not give the incumbent an unfair advantage. From what we know so far about Sen. McConnell's bill, it would seem to pass those tests.—JIM PAXTON.

CONVICTIONS OVERTURNED IN MANDEL RACEWAY CASE

(By Paul W. Valentine)

BALTIMORE, Nov. 12.—A federal judge today overturned the 10-year-old mail fraud and racketeering convictions of former Maryland governor Marvin Mandel and five associates in a reversal that stunned prosecutors and brought at least temporary vindication to the once-powerful Mandel.

U.S. District Judge Frederic N. Smalkin, basing his ruling on a June Supreme Court decision, said that Mandel and the others were convicted in an overly broad use of the federal mail fraud statute and all counts against them therefore must fall. That Supreme Court decision prompted Mandel to seek a new review of his case.

The ruling, if upheld on appeal, could lead eventually to Mandel's criminal record being expunged, restoration of his right to practice law and the return of thousands of dollars in fines levied against four of his associates.

Maryland U.S. Attorney Breckinridge L. Willcox said he would appeal.

"Vindication is all that I've ever been seeking, and the judge has provided that," a smiling Mandel, 67, said at a news conference just hours after the ruling. He said he will not seek financial compensation for his time in prison.

"I never did anything to hurt the people of the State of Maryland or deprive them of anything," he said. "And the judge has just said the same thing."

Barnet D. Skolnik, the zealous federal prosecutor who spearheaded the Mandel prosecution, said yesterday that Smalkin's decision doesn't change anything.

"Nothing will ever change what Mr. Mandel did," Skolnik said. "He sold his office . . . He sold out the people of Maryland and that's never going to change."

Speaking in the office of his Baltimore attorney, Arnold Weiner, Mandel said he has no plans to reenter politics, but left the possibility open by adding "at this time." He said his wife Jeanne, who sat by him at the news conference, does not want him to run for office again.

What kind of political position might be open to Mandel is unclear. Since his release from prison nearly six years ago, he has acquired growing influence behind the scenes in state politics and Maryland Gov. William Donald Schaefer has said he is one of Mandel's fans. Mandel has said that he has turned down offers to lobby for various groups.

Schaefer, who as mayor of Baltimore offered Mandel a work-release job at City Hall when Mandel had completed his prison time in 1981, said yesterday, "I am not surprised by the ruling. I have known Marvin Mandel and Irv Kovens [one of the codefendants] for years and never knew them to do anything illegal."

Today's decision was the latest in one of the longest-running and most dramatic political sagas in Maryland's history. As governor—a post he first won by legislative appointment when Gov. Spiro T. Agnew became vice president—Mandel was considered a master of politics and legislative strategy. In the early 1970s, he shocked Marylanders by leaving his wife Barbara for another woman.

By the mid-1970s, he was caught up in the scandals that swept Maryland, such as taking a $50,000 loan from a Catholic fundraising order called the Pallottine Fathers to help finance his divorce from Barabara Mandel.

The case involving the Marlboro Race Track unfolded with indictments of Mandel and his codefendants in 1975 and a mistrial in 1976 because of publicity concerning jury-tampering allegations. After his conviction in a second trial the following year, Mandel appealed the case through the federal appellate courts and was ultimately turned down by the Supreme Court.

Prosecutor Willcox expressed disappointment at today's ruling but added, "I can't say I'm totally surprised" in light of the Supreme Court decision on which Smalkin based his ruling.

In that decision, made in June, the high court held that mail fraud prosecutions against state officials can be made only when the fraud involves economic loss rather than intangible losses, such as the loss of good governance by public officials, as charged in the Mandel case.

Mandel and five other defendants were convicted in 1977 of 15 counts each of mail fraud and one count of racketeering in an alleged scheme to increase the value of Prince George's County's Marlboro Race Track in 1972 and 1973. The horse racing track, now defunct, was secretly owned at the time by the five codefendants, W. Dale Hess, Harry W. Rodgers III, William A. Rodgers, Irvin Kovens and Ernest N. Cory.

As governor, Mandel helped the track obtain extra racing days, which are controlled by the state and worth millions of dollars in profits for track owners.

In exchange, according to prosecutors, the tracks' secret owners heaped money, jewelry and vacations on Mandel, as well as financial assistance in his divorce and remarriage.

Mandel served 19 months in prison and was disbarred. Hess, Kovens and the two Rodgers were fined $40,000 each and imprisoned for terms of one to three years. Cory received a suspended sentence.

Mandel, who was released from prison in late 1981 and has worked as a building contracting consultant and sometime radio talk show host, had sought repeatedly to get his conviction overturned, ironically on much the same grounds as Judge Smalkin provided for him today.

In various appeals, Mandel had contended that both the indictment against him and the trial judge's charge to the jury in 1977 referred primarily to defrauding the citizens of Maryland of their right to "conscientious, loyal [and] faithful . . . services" of the governor, all intangible values, rather than concrete economic worth, as required by the federal mail fraud statute.

Smalkin agreed. Under the *McNally* ruling of the Supreme Court in June, he said, the mail fraud statute "has been limited from its inception to the protection of money and property (rather than nonmonetary, i.e., "honest and faithful government") rights."

The legislative history and intent of the statute show that its reach "has logically been as narrow as *McNally's* interpretation since the day of its enactment," Smalkin said.

The jury, he said, was incorrectly instructed to allow a "conviction if the jurors simply became convinced that the defendants had subverted the process of honest government in Maryland. The evidence of concealment of ownership of Marlboro shares and of Mandel's secret financial arrangements certainly showed that something fishy, and perhaps dishonest, involving Maryland's governor and some of those personally and politically closest to him was going on."

"Mandel might well have been bribed," the judge said. "His codefendants might well have bribed him. But however strong the evidence of dishonesty or bribery, the jury was told it could convict for something that did not amount to a federal crime."

Smalkin, a former U.S. magistrate and a federal judge here for little over a year with a reputation for painstaking scholarly research, added in an unusual passage that his ruling today "has nothing to do with [Mandel and his codefendants'] guilt or innocence, in any moral sense."

He said: "The people of Maryland, as a matter of natural law, have and have always had an inalienable right to good government. A jury of 12 citizens found beyond a reasonable doubt that the [defendants] had deprived all the citizens of Maryland of that right. This conduct, however, for reasons amply set forth . . . cannot sustain a judgment that the defendants were guilty of federal crimes. A final answer to the question of [the defendants'] guilt or innocence, in any broader sense than that, must await the judgment of history."

Willcox argued in court papers this fall that bribery—the taking of tangible goods for illegal purposes—underlay the mail fraud and racketeering charges.

The case involved a "sordid tale of corruption, bribery and deceit at the innermost sanctum of state government," Willcox said.

But Smalkin ruled that while the word bribery appears in the Mandel indictment, its main thrust nevertheless was the loss of intangible "good government" rights, and both the racketeering charges and the underlying fraud counts thus must be set aside.

"We had hoped to persuade [Smalkin] that this was a bribery case, an economic deprivation case, unlike McNally," said Willcox today. "But we failed."

HIGH COURT OPINION COULD JEOPARDIZE OTHER FRAUD CASES

(By Ruth Marcus)

The Supreme Court decision that led to the reversal of the decade-old conviction of former Maryland governor Marvin Mandel has also jeopardized scores of other prosecutions and convictions of corrupt public officials and private citizens.

The high court's ruling in June could affect at least 185 convictions and 100 more cases under investigation, and that estimate is conservative, said Gerald E. McDowell, chief of the Justice Department's Public Integrity Section.

The decision severely restricted the reach of the federal mail fraud law, enacted by Congress in 1872 "to prevent the frauds which are mostly gotten up in the large cities . . . by thieves, forgers, and rapscallions generally, for the purpose of deceiving and fleecing the innocent people in the country."

In recent years, the law, which prevents the use of the mails in any "scheme or artifice to defraud," has been a favorite tool of federal prosecutors. They have used mail fraud and its modern-day companion, wire fraud, as a means of punishing conduct that looks wrong yet may not be explicitly prohibited under other federal statutes.

The theory—accepted by all the lower courts to consider it, including the appeals court in the Mandel case—had been that, in the case of public officials who abused their trust, citizens have been defrauded of their "intangible rights" to honest and impartial government. Likewise, private individuals have been convicted of mail or wire fraud

for violating their fiduciary duty to their employers or unions.

The rule among prosecutors has been, "When in doubt, charge mail fraud," said Columbia University law professor John C. Coffee Jr. "If it didn't fit into the clear pigeonholes of other statutes, you charged mail fraud and charged generally a scheme to defraud the public of the faithful and honest services of public officials."

The Supreme Court's 7-to-2 ruling in *McNally* v. *U.S.* ended all that.

In an opinion by Justice Byron R. White, the court held that federal prosecutors must show that the fraud caused actual economic injury, not just intangible harm.

The ruling came in the case of James E. Gray, cabinet secretary to then-Gov. Julian M. Carroll of Kentucky, and Charles J. McNally, a Kentucky businessman, who participated in a scheme to funnel commissions on state insurance business to an agency nominally owned by McNally but in fact controlled by Gray and another Kentucky politician.

"Rather than construe the statute in a manner that leaves its outer boundaries ambiguous and involves the federal government in setting standards of disclosure and good government for local and state officials, we read [the mail fraud law] as limited in scope to property rights," White wrote.

The opinion prompted an outraged dissent by Justice John Paul Stevens. "Can it be that Congress sought to purge the mails of schemes to defraud citizens of money but was willing to tolerate schemes to defraud citizens of their right to an honest government, or to unbiased public officials?" Stevens asked in an opinion joined by Justice Sandra Day O'Connor.

McNally's lawyer, Carter Phillips, termed the ruling "about as good news as defense lawyers have had in 10, 15 years."

Assistant Attorney General William F. Weld, head of the Justice Department's criminal division, called *McNally* "a real kick in the teeth" and said he had heard "yelps from all over" the country as U.S. attorneys assessed the damage to convictions and pending prosecutions.

In the aftermath of the decision, the effect of which is considered retroactive:

The Supreme Court last month vacated the conviction of former Cook County, Ill., circuit judge Reginald Holzer, sentenced to 18 years for mail fraud, extortion and racketeering in the Operation Greylord scandal. The high court returned the case to a federal appeals court in Chicago for reconsideration in light of the *McNally* decision, which could also imperil nine other Greylord convictions.

Prosecutors in New York dropped several fraud counts against Rep. Mario Biaggi (D-N.Y.) and three others in a case involving charges that the Wedtech Corp. bribed public officials to help obtain military contracts.

Lawyers for former Wall Street Journal reporter R. Foster Winans and two others convicted in an insider trading scheme to profit through advance tips about contents of the Journal's Heard on the Street column argued in the Supreme Court last month that—under the reasoning in *McNally*—their fraud involved only intangible harm and that therefore their convictions should be overturned.

Solicitor General Charles Fried contended that *McNally* did not apply because "property was misappropriated here" in the form of information belonging to the Wall Street Journal.

A federal judge in New York dismissed 46 of 54 mail and wire fraud counts in a major Iran arms-smuggling case against 10 international businessmen accused to conspiring to ship more than $2 billion in arms to Iran.

"The kinds of cases that are going to go down the tubes I would call abuse of power cases, where people like Gov. Mandel sold his power," said G. Robert Blakey, a law professor at Notre Dame. Mandel "didn't cheat on a particular contract. Nobody lost anything. The state gained the revenue. Who lost in the old-fashioned tangible sense? The answer is nobody. But the government was for sale."

Not all convictions challenged on the basis of *McNally* have been overturned. In Philadelphia, a federal judge last month rebuffed an attempt by former city commissioner Maurice Osser, found guilty in 1972 of a scheme to take kickbacks from a printing contractor, to win a new trial. The judge said Osser failed to raise the issue earlier and that giving him a new trial "at such a late date . . . would create a manifest injustice to the city of Philadelphia and its citizens."

Rep. John Conyers Jr. (D-Mich.), chairman of a House Judiciary subcommittee on criminal justice, has introduced legislation to undo the McNally decision. The Justice Department, meanwhile, is embroiled in an internal dispute over what, if any, legislation to propose. While a number of federal prosecutors and others are arguing for legislation that would directly overrule the case, some top department officials cite principles of federalism and question the advisability of that approach, department sources said.

In the meantime, said Associate Attorney General Stephen S. Trott, "it's a severe blow." The law "has been used successfully and effectively by federal prosecutors against corrupt politicians," he said. Without any hint of trouble from the Supreme Court, "we thundered ahead in lots and lots of cases."

Now, he said, "We really have a lot of repair work that has to be done."

CLOSING THE "MANDEL LOOPHOLE"

(By Mitch McConnell)

The Post was most appropriately ambivalent in its Nov. 15 editorial surveying the aftermath of the recent Mandel decision. The overturning of the 10-year-old mail fraud conviction of former Maryland governor Marvin Mandel was the legally correct thing to do, but it hardly was a vindication of justice—even for Mandel himself, who had long since completed his sentence for use of the mails in connection with a kickback scheme. Further, the judge who threw out the conviction hardly disputed the prior allegations against Mandel's dealings, which the judge himself characterized as "fishy and perhaps dishonest."

Instead, Mandel's conviction was overturned because there no longer was any law to prosecute him under. Four months earlier, in *McNally* v. *United States*, the Supreme Court had declared that federal fraud statutes were inapplicable to government corruption and that the laws didn't protect citizens' intangible property right to good government. This ruling was a tremendous blow to federal prosecutors, who for years have successfully used federal fraud statutes to battle corruption in state and local government.

When people are denied fair and honest representation because of discriminatory voting practices, election fraud, corruption or other abuses of power, redress rarely is available at the local level. That is why Congress stepped into the states in 1965 with the Voting Rights Act, to eradicate a tradition of discrimination against minority voters. For the same reason, federal fraud prosecutions have been one of the few truly effective remedies against entrenched, corrupt local politicians.

The Supreme Court eliminated that remedy, however, undermining nearly 200 past corruption convictions based on fraud—starting with Mandel's—and bringing to an abrupt halt at least a hundred current investigations. It's anyone's guess whether these investigations will be completed in good faith by state officials.

Nevertheless, The Post correctly noted that the Supreme Court's reasoning was "right," even if the result seems disastrous. Criminal statutes ought to be applied narrowly and not used as blunt weapons against every kind of offensive practice, however egregious. The problem really is in the law itself, which unduly restricts the federal government's role in setting high standards of democracy, through fair elections and honest government.

I have introduced legislation, the "Election Fraud Prevention Act of 1987" (S. 1837), to broaden that role where federal involvement is warranted. It would elevate most election offenses—such as vote buying and voter harassment—from misdemeanors to federal felonies, deterring a form of corruption that state officials often ignore or tolerate. The bill would strengthen federal laws against trading government benefits for campaign contributions, improving prosecutors' resources in fighting corruption. And it would allow candidates to obtain federal supervision of election activity at polling places where wrongdoing is anticipated.

S. 1837 is not designed to completely overturn *McNally* or *Mandel*, since both rulings clearly are on solid legal ground. Instead, the bill repairs some of the damage these decisions have caused and attempts to focus Congress' attention on the need for a better defined and perhaps more active federal role in the law-enforcement war against government corruption and election fraud.

Yet some believe that it's not the federal government's business at all to stop election and government abuses at the state level. That was the argument used against the Voting Rights Act of 1965: simply put, it is the states' right to be as corrupt as they can get away with. Fortunately, however, Congress at that time recognized that it had an obligation to protect the right of all Americans to vote, without restrictions or harassment. It could have left the problem for the states to solve, but instead it acted with conviction and wiped out voting discrimination within just a few years. It's anyone's guess whether those entrenched practices still would be around had Congress not taken the lead.

Mr. McCONNELL. I wrote then, and still believe, that the Mandel case is just the beginning of an avalanche of anticorruption reversals. Further, McNally and Mandel have tied the hands of the Justice Department in over 100 pending corruption cases.

So that brings us to the legislation we introduced yesterday, the Biden-McConnell Anti-Corruption Act. That bill is based on another measure I introduced with my good friend the Senator from South Carolina, Senator THURMOND, in June on this year. The

earlier bill, called the Anti-Public Corruption Act, specifically met the problem of fighting Government corruption after McNally. That bill was put together with the invaluable assistance of the Justice Department, which also has played an important role in shaping this new, broader approach.

The new measure we introduced yesterday, S. 2793, is the product of long negotiations with key members of the Senate Judiciary Committee, negotiations that were conducted in the spirit of true bipartisan cooperation, in which we refined and expanded the administration bill to develop a comprehensive law enforcement response to public and private corruption.

This bill will restore—and to some extent enlarge—the Federal Government's authority to investigate and punish corruption at every level by making it a Federal offense to deprive citizens of the honest services of any public official or employee; by making it a felony to deprive any private organization of the honest services of an employee; and by making it a felony to deprive citizens of a fair and impartial election process—through vote buying, voter coercion, or executing fraudulent election forms. Finally, this bill imposes new penalties against corruption and election fraud, to send a signal that the Federal Government is no longer going to tolerate these abuses at any level of society.

Let me say in conclusion, Mr. President, that we cannot wait another year in the fight against corruption in this country. We need this bill—urgently: Kentucky needs this bill; citizens who are trying to fight an entrenched Tammany hall in their home town need this bill; prosecutors who are trying to weed out white-collar crime need this bill; voters who don't want to be afraid when they go to the polls, and who want honest elections in their precincts need this bill.

I am committed, as I know my colleagues who have worked with me are as well, to getting this bill passed this year. There is strong bipartisan support for this measure. The administration is fully behind this bill, and I ask, Mr. President, that a letter from Attorney General Richard Thornburgh in support of this bill appear in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, September 15, 1988.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is to express the strong support of the Department of Justice for your bill, the Anti-Public Corruption Act of 1988. This bill, which builds upon the proposal in this area sent to Congress by the Administration last May, would greatly strengthen and improve federal laws relating to public corruption. We are grateful to you and the bipartisan group of Senators (i.e. Senators Thurmond, McConnell, DeConcini, Simon, and Metzenbaum) joining you in sponsoring this measure and hope that it can be enacted before the end of the Session.

The core of the bill is a proposed new section 225 in title 18, United States Code, that would punish schemes to deprive or defraud the inhabitants of the United States or a State of the honest services of their public officials and employees, both elected and appointed. This section, which is very similar to the legislative remedy suggested by the Department, would restore federal coverage of public corruption schemes that was lost last year as a result of the decision of the Supreme Court in *McNally* v. *United States*, 107 S.Ct. 316 (1987), which overruled a long line of lower court precedents and adopted a narrow construction of the mail fraud statute under which only schemes to obtain money or property could be prosecuted, not schemes to deprive the citizenry of the intangible right to the honest services of their public officials. Moreover, section 225 contains substantial improvements over the pre-*McNally* mail and wire fraud statutes. The new section would increase the penalties for public corruption schemes (from a former maximum of five to a maximum of twenty years' imprisonment), and would extend federal jurisdiction over corruption schemes that affect interstate or foreign commerce or that use any facility of such commerce, not merely schemes in which the mails or an interstate wire communication is used. The broader jurisdiction provided in the proposed legislation will enable the government to prosecute a wider range of corrupt conduct and thus better protect the public.

In addition, the bill would restore much of the ground lost under *McNally* with respect to the ability to prosecute private sector schemes seeking to subvert the honesty and loyalty of officers and employees of an organization such as a partnership or corporation. With respect to public corruption schemes, the bill would also create new criminal and civil sanctions to protect employees who bring such schemes to the attention of law enforcement authorities and cooperate in the investigation. While not as important, in our view, as the core provision in section 225, we do not object to these additional proposals, which are clearly designed to further strengthen the bill.

Our vigorous support for the bill is, however, primarily founded upon the positive impact that the legislation, in our judgment, would have on the Federal Government's ability to prosecute public corruption schemes. We believe the citizens of this country are entitled to honest government, and that the United States, consistent with sound principles of federalism, must play a major role in insuring that most basic of intangible rights. Prosecution of public corruption cases has been one of the Department's largest priorities since the mid-1970s and if anything has increased in recent years, in part because of the proven link between public corruption and large scale drug trafficking. As a result of the Supreme Court's unexpected *McNally* interpretation last year, a sizable gap currently exists in the federal statutory arsenal that can be employed against corrupt public officials in all States throughout this nation. Prompt enactment of your bill, such as through an amendment to the omnibus anti-drug legislation that will shortly be considered by the Senate, would close this gap and would represent a major bipartisan accomplishment of the 100th Congress. The Department of Justice, and the Administration, stand ready to do whatever is necessary and appropriate to help achieve that goal.

Sincerely,

DICK THORNBURGH.

The momentum is out there in Kentucky and in the rest of the Nation to keep up the fight against corruption. Thus, I urge my colleagues to join me and my friends on the Senate Judiciary Committee, in supporting this vital legislation.

I yield the floor.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Iowa.

Mr. HARKIN. I thank the Chair.

A SAD AGRICULTURE RECORD

Mr. HARKIN. Mr. President, GEORGE BUSH the other day made some weak attempts to address farm policy when he was in the Middle West. Typically, he misstated what we Democrats stand for in the way of farm policy, rural policy, and he also again typically ignored the Reagan-Bush administration's sad record on agriculture and rural America.

I have been in Congress now 14 years, Mr. President. I have devoted a great deal of my time and effort to legislation to preserve our family farm and ranch system of agriculture and our small towns and communities. So I would like to bring out a few facts this morning to set the record straight on who stands where for our farmers, ranchers, and rural America.

As President Reagan said, facts are, indeed, stubborn things, so let us look at some of those. GEROGE BUSH likes to brag about the administration's agriculture policy. Well, I do not want to hear any more bragging from him. What I would like to see him do is go out and get a representative sample of farmers, and ranchers, I do not care from where, and ask them one simple question that President Reagan asked the American people a few years ago: Are you better off today than you were before the Reagan-Bush administration came into office? I challenge him to ask any group of farmers or ranchers that simple question. In fact, I would go even further. Have him bring together some people from our small towns and communities and ask them if their small towns and communities are better off today than they were when this administration came into office.

I do not need to hear the answer, Mr. President. I know you do not either. But Vice President BUSH obviously needs to hear that answer. Maybe then he will understand what the Reagan-Bush administration has done to our farmers and ranchers.

According to their own Department of Agriculture figures, the United States now has 275,000 fewer farms and ranches than it had in 1980, but

that figure is not entirely correct. Those are their figures. They do not include the thousands and thousands of farm and ranch families who have lost virtually all of their operations but have managed to hang on to just enough to qualify as a farm under the Department of Agriculture's definition.

Precise figures are difficult to obtain, but I am convinced that an accurate figure would show that around 600,000 or more family farms and ranchs have gone out of business during the Reagan and Bush years.

Look at farmland values. Farmland values in my State are still less than half of what they were in 1980. A recent Iowa farm survey conducted before the drought showed 21 percent of Iowa farmers were in marginal or stressed financial condition. One out of every five.

Well, this administration likes to say that farmers are a little bit better off than they were a few years ago. That is true in part. But I always point out that one is infinitely more than zero. The Reagan-Bush administration let farmers get beat down so far, then they give them a little bit of money, and said, "Well, you are better off now than you were a couple of years ago." But our farmers are not nearly where they were at the beginning of this administration.

We do not need a lot of statistics, though, Mr. President, to see what has happened in rural America during the Reagan-Bush years. Just drive down any rural road in the Midwest and count the vacant houses, the farm buildings that have fallen into disuse, the abandoned orchards, gardens, and groves; drive through our small towns; count the number of businesses that have closed up, the people who have moved away. We all have read, seen, and heard about the financial crises and human tragedy that have occurred in rural America in the past few years.

What was the Reagan-Bush administration doing during this catastrophe? Well, first of all, it was in Federal court foreclosing on family farms and ranches, arguing that it had no obligation to follow laws specifically designed by Congress to help family farmers and ranchers keep their land. It came to Congress arguing that less money was needed to provide help to financially distressed farm and ranch families and rural communities. In the midst of the farm crisis, it argued that the solution to the problem was lower commodity prices for our farmers. For a long time the administration even denied there was a problem.

While farmers were going out of business at alarming rates, spending on farm programs went up and up. In fiscal year 1980, outlays for Government price support and related payments were $2.8 billion. In fiscal year 1986 the figure had risen to an astounding $25.8 billion. The administration claims that they have had a successful farm policy. Well, under policies set by this administration, the Federal Government will have spent over $128 billion over 8 years in price and income supports, and yet 600,000 farms have already gone out of business.

If that is success, we cannot stand much more of that kind of success. But where has the money gone? It goes to a few—just like the rest of the Reagan-Bush administration's policies, their tax policies and everything else. A few get a lot, and the rest get little. Well, it is now expected that in this year alone we will be spending somewhere in the neighborhood of about $11 billion-plus drought relief, and more farmers will go out of business again this year.

GEORGE BUSH says he wants to expand agricultural exports. We all do. But again look at the Reagan-Bush record. In fiscal year 1981, the value of U.S. agricultural exports was $43.8 billion. By 1986 it had fallen to $26 billion. USDA has estimated that maybe for fiscal year 1988 it will be $34 billion, still below what the figure was for 1981. Again, these figures have not even been adjusted for inflation.

Well, here is another interesting point, Mr. President. I see the President in the chair now is from the great State of North Dakota. I know the distinguished President sitting in the chair has a great deal of interest in agriculture, knows his State well, and was actively involved. I know also in opposing the Soviet grain embargo that the Reagan administration always likes to talk about—the grain embargo under the Carter administration that we all opposed. But, lo and behold, who has GEORGE BUSH put on his foreign policy advisory panel? He is the architect of the 1980 grain embargo—Zbigniew Brzezinski. This is the guy who devised the grain embargo. Now he is advising GEORGE BUSH.

I think the farmers, the ranchers of North Dakota, Iowa, and the rest of the country ought to know who is going to be calling the shots in the GEORGE BUSH administration, the same guy who called the shots on the grain embargo.

Mr. President, the other day GEORGE BUSH said Democrats want to "control farmers' lives"—want to get in there, control them all, and all of that. I have a little news for them. On Monday of this week I spent a workday in the county ASCS office in Clarke County, IA. I am just amazed at the burdensome amount of paperwork our farmers and our ASCS personnel have to go through today compared to what they did before the Reagan-Bush administration. I mean form after form; it almost seems that for a farmer to do anything now the farmer has to come into the ASCS office, get approval, sign something, fill out a form, and go back before the farmer can do it. I might just point out again, Mr. President, that I know you will be interested in this. From 1985 to 1987 the number of ASCS employees in Iowa went from some 1,100 to more than 1,900—more bureaucrats and fewer farmers. Lord knows we have lost a lot of farmers in Iowa. But the number of bureaucrats hired to serve those left have gone up, and yet it is GEORGE BUSH who is saying we Democrats are the ones who want to control the farmers' lives. As Al Smith said, "Look at the record," and the record is just the opposite.

This administration promised to get the Government out of farming but it has intruded in every aspect of farmers' operations—conservation plans; PIK payment; PIK certificates countersigned; a set-aside, come in and verify it; a ground cover, come in and verify it; the feed programs, come in and verify; everything requiring mountains of paperwork.

In fact, I do not know—I say to the President sitting in the Chair—what the State of North Dakota is doing right now, but I can tell you in Iowa ASCS offices close at noon 3 days of every week. They are open from 8 until noon. Then they close their doors. Why? So they can get the paperwork done in the afternoon. Mr. President, that is a sad state of affairs. We increase the number of employees, cut down the number of farmers, and close the doors at noon so they can get the paperwork done, and yet GEORGE BUSH says it is we Democrats who want to "control farmers' lives"—nonsense.

It is we Democrats who want to make sure the farmer gets income from the marketplace, and not from a government paycheck. People are saying in Iowa now that what the farmer is farming is a small strip between his back door and the mailbox. That's the path used to go out and get that government check. Let us put the farmers back to farming their fields, and make sure farmers get their income from the market, and not from a government paycheck, because we have seen what happens when you get it from the government paycheck. You get the paperwork, and you get all of this burdensome intrusion into farmers' daily lives.

I want to take this time to set the record straight. It looks like we are going to have to keep setting the record straight for the next 50-some days until the election as long as Vice President BUSH and Senator QUAYLE are out there misrepresenting what this administration has done to farmers and ranchers and rural communities in the last 8 years.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATIONS OF WOMEN

Mr. BYRD. Mr. President, last Friday, the President criticized the Senate for holding up the nominations of 40 women for various positions in the Federal Government.

Up to this date in time, the Senate has confirmed 228 women for full-time positions in the administration. A review of the number of women awaiting Senate confirmation for full-time positions shows that, as of last Friday, only 18 of these nominations had not completed the confirmation process. That is the same day that the President criticized the Senate for holding up the nominations of 40 women. The old math and the new math come out the same. No matter which way you look at it, the President was wrong.

Let me say again: A review of the number of women awaiting Senate confirmation for full-time positions—I am not talking about part-time positions on boards where they may meet once a year or once every 2 years, or whatever; I am talking about full-time positions—shows that as of last Friday, the same day the President made his statement, only 18 of these nominations had not completed the confirmation process. This week, two more nominations were received for full-time positions. Out of the 20 positions pending in the Senate, 15 of these nominations have been sumitted to the Senate since June 20 of this year.

Any reading of these numbers does not justify any charge or implication that the Senate is failing to act on the nominations of women for high-level Federal positions.

While the President deserves credit for the nomination of the first woman to sit on the Supreme Court, Sandra Day O'Connor, his record of nominations of women for the Federal Bench over the past 7½ years is not a stellar one.

This administration has had two terms in which to nominate women for Federal courts. However, out of 409 total nominations, only 35 have been women. During a 4-year administration, President Carter nominated a total of 258 persons for article III courts, and out of that number 40 were women. That was in 4 years, as against more than 7½ years under this administration.

Thus, as compared to the Carter administration, the present administration has not only nominated fewer women to positions on the Federal bench during twice the number of years, but also, their percentage of women nominated out of the total number of nominations is only 8.6 percent as opposed to the 15.5 percent achieved by the Carter administration.

During my service in the Senate, I have promoted women to many positions of responsibility, and I will continue to be willing to carefully consider the merits of all nominations, including the 20 women nominees presently pending before the Senate. I repeat: Confirming 228 out of 248 nominations of women for high-level, full-time Federal positions is hardly one of going slow on nominations of women.

SOUTH CAROLINA PROCLAMATION TO SUPPORT SEPTEMBER 16, 1988, AS "POW/MIA RECOGNITION DAY"

Mr. THURMOND. Mr. President, I rise to commend the State of South Carolina and Gov. Carroll Campbell for issuing a proclamation to support the Congress of the United States and the President in proclaiming Friday, September 16, 1988, as "National POW/MIA Recognition Day." The sacrifices of American prisoners of war and missing in action and their families are deserving of national recognition.

Our Nation must continue to be relentless in seeking a full accounting of the 2,400 Americans still missing in Southeast Asia. President Reagan has continuously proclaimed his total commitment to a full accounting. Recognition day is to remind all Americans that we must maintain our vigilance until this tragedy is resolved. It is encouraging that progress has been made with Hanoi in seeking a full accounting, as a result of negotiations between Gen. John W. Vessey, Jr., and Hanoi officials last year.

Mr. President, our great and patriotic State of South Carolina stands firmly behind the President and the Congress in joining all Americans on this special recognition day to focus our efforts on a full accounting of POW's and MIA's. I ask unanimous consent for the South Carolina proclamation to be printed in the CONGRESSIONAL RECORD following these remarks.

There being no objection, the proclamation was ordered to be printed in the RECORD, as follows:

PROCLAMATION BY GOV. CARROLL A. CAMPBELL, JR., ON NATIONAL POW/MIA RECOGNITION DAY

Whereas, the United States has fought in many wars; and

Whereas, thousands of Americans who served in such wars were captured by the enemy or are missing in action; and

Whereas, many American prisoners of war were subjected to brutal and inhuman treatment by their enemy captors in violation of international codes and customs for the treatment of prisoners of war and many prisoners of war died from such treatment; and

Whereas, the sacrifices of American prisoners of war and Americans missing in action and their families are deserving of national recognition.

Now, Therefore, I, Carroll A. Campbell, Jr., Governor of the State of South Carolina, do hereby proclaim Friday, September 16, 1988, as: "National POW/MIA Recognition Day" in South Carolina and urge all South Carolinians to observe such day with appropriate ceremonies and activities.

THE SUPREME COURT'S ROLE IN PROMOTING WOMEN'S RIGHTS

Mr. PACKWOOD. Mr. President, I rise today on the matter of the Supreme Court and the role it has played in the fight for women's rights. Gains in the battle for women's rights have been slow and incremental. In fact, all of us committed to women's rights are still fighting for such basics as the equal rights amendment. And as late as 1961, the Supreme Court found it constitutional to exclude women from serving on jury duty unless they volunteered because it would interfere with their homemaking responsibilities.

In 1971, for the first time, the Supreme Court held that government policies and laws that discriminated on the basis of sex must be subjected to a stricter standard of scrutiny under the equal protection clause of the 14th amendment. Under this new standard, the Court struck down statutes that gave preference to men over women.

The Supreme Court's 1973 decision in Roe versus Wade to legalize abortion was a necessary step in the political process to enfranchise women. The Court recognized that women cannot take their equal place in society unless they are able to control their fertility. Justice Blackmun, in writing for the majority in that case, stated that there is a fundamental right to personal privacy that is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.

At the time of the Roe decision, only four States permitted a women to consult with her physician to make her own decision to terminate her pregnancy. Many States sought to discourage abortions by establishing severe criminal penalties. While these laws were in place, enforcement was difficult, if not impossible, because there was little incentive to report the abortion to law enforcement authorities. Family members who may have known of an abortion were naturally not eager to have the woman condemned as a criminal. Indeed, I think there are few among us today, even those who oppose the Supreme Court's decision,

who would argue that women who choose abortion should be prosecuted as criminals.

As a supporter of a woman's right to choose an abortion even before the Supreme Court's historic decision, I am deeply disturbed by Justice Blackmun's recent remarks that there is a very real possibility that the Supreme Court may overturn the Roe versus Wade decision in the Court's next term. Justice Blackmun, in an address to a group of law students several days ago, spoke in broad terms about the possibility that the Court may reverse itself on this issue due to the addition of several new members on the Court since the decision was handed down. Of these three new appointees, one is decidedly against the Court's judgment in Roe. The other two may be deciding factors in any case involving this precedent. As Justice Blackmun said, a key factor in the Court's review of a case involving the right of abortion might hinge on how these newer justices view the principle of stare decisis, or settled law.

In addition to the Supreme Court, women's rights advocates should also be concerned about the judicial appointments to lower courts. These appointments are significant because the majority of cases are decided at this level and are never brought before the Supreme Court.

The Roe decision signaled the beginning of truly national controversy on the issue. The 15th anniversary of the decision took place in January of this year, yet the issue is as politically and emotionally charged as ever. One has only to look at the evening news to see the placards of antichoice and prochoice voters at every campaign event held by candidates running for President.

Many of us in this body know only too well that the abortion issue is the single most important issue to a large number of voters. And I am only too aware that the largest number of single issue voters on the abortion issue are those opposed to the Court's 1973 decision. The abortion issue has become one of the most discussed and voted upon by the Congress. Opponents of the Supreme Court's decision do not pass up too many opportunities to attach an abortion rider to bills not even remotely related to women's rights or health. Antichoice legislators have found that an effective way to delay action on bills is to use the threat of an abortion amendment to hold the legislation hostage.

Over the last 7 years, Congress has had numerous chances to review the basic premise of the Court's decision on abortion, but the Congress has barely been able to hold the line on maintaining a woman's right to abortion. One important exception is the Senate's recent vote to expand the availability of Medicaid funded abortions to victims of rape and incest. However, the House of Representatives refused to go along with the Senate position. In addition, the President threatened to veto the entire appropriations bill solely because of this Medicaid funding provision for abortions. Prochoice Senators were narrowly defeated on this issue when they attempted to stand firm on their position that a woman's right to abortion should not depend on her income.

We are now faced with the fact that the current Supreme Court is by no means assured of sustaining the decision in *Roe* versus *Wade* and with the almost certain possibility that there will be at least one vacancy on the Court that the next President will fill. This makes it critical for the Congress to redouble its efforts to maintain the gains that women have won in the area of abortion rights and continue to push for gains in other areas such as child care, parental leave and the equal rights amendment. I pledge that this Senator will do what he can to ensure that the battle for women's rights will continue until all women are able to take their equal place in society.

DEATH OF WILLIAM A. EDWARDS

Mr. SHELBY. Mr. President, I would like to note for my fellow Senators that a gentleman who was a friend to many of us, William A. Edwards, passed away on August 25. Bill will be remembered by his friends and acquaintances as an aggressive, but fairminded, lobbyist on many of the important energy issues of the past decade.

Bill lost a tough battle with lung cancer, but not before establishing himself on Capitol Hill as an effective spokesman and representative for the electric utility industry, particularly on nuclear issues. Bill never was one to shy away from a tough fight, and his efforts on behalf of both the Seabrook and Shoreham nuclear plants were important in keeping those plants headed down the path to final licensing.

Bill Edwards was also a man who truly loved people. Beginning with his wife Linda, and their two children, Jim and Chris, Bill's circle of friends spread far and wide. From his days as a newspaper editor and political activist on Long Island, to the years he spent here in Washington, Bill was always on the lookout for ways to help others. Whether it was advice on an issue, help on a project or a tip on a job, Bill Edwards always had an idea he was willing to share.

As a Vietnam combat veteran, Bill also possessed a deep love for his country and a strong commitment to its Government. He loved working in the political arena because he believed in it, and he was fortunate enough to have talents that allowed him to be a true contributor and leader. His leadership on such legislation as the Nuclear Waste Policy Act of 1982 and the Electric Consumer Protection Act of 1986 was key in helping those bills reach the President's desk and become law.

Bill Edwards will be missed on Capitol Hill, and he will be missed by all those who knew him and worked with him. Bill's family should be proud of the contributions he made to his friends and his country, and he will be remembered as a good man who worked hard for that in which he believed.

SYRIA STRIKES AGAINST LEBANESE DEMOCRACY

Mr. HELMS. Mr. President, Syrian intervention in the current Lebanese Presidential election is a calculated effort to destroy the constitutional system of Lebanon. President Amine Gemayel's term of office under the Lebanese Constitution ends September 23. To date, Syrian dictator Hafez Assad has systematically prevented the election of a legitimate successor to President Gemayel, further proof that Assad is a threat to peace in the Middle East.

According to the Constitution, the Lebanese Parliament elects the President who must by tradition be selected from the Christian community. The Prime Minister and the Speaker of Parliament by tradition are selected from the Muslim community.

Assad first tried this August to impose his puppet, former President Suleiman Franjieh, as the sole candidate. The majority of Christian and Muslim deputies living in East Beirut in protest boycotted the Syrian-orchestrated election on August 18. The Syrian Franjieh candidacy was in direct contravention of United States diplomatic efforts in support of a free election in which a consensus candidate could be selected to maintain Lebanon's sovereign independence and democratic character.

Assad then moved to make a free and fair election process impossible by attempting to force the Lebanese Parliament to come over to Syrian controlled West Beirut to conduct the election process. Setting the election date for September 22, Assad, using the formidable resources of intimidation at his command, pressured Speaker Hussein Husseini to designate the old Parliament building in West Beirut as the election site. Obviously, Christian and moderate Moslem deputies would be de facto hostages of Syria should they cross into West Beirut rather than hold the election along the neutral green line area at

the Mansour Palace, the current seat of Parliament.

Assad's newest move pushes the election date to September 22 which is just 1 day before President Gemayel's term is over. Since this date makes it next to impossible for the election to take place, Assad plans to force President Gemayel into appointing the old cabinet of Acting Prime Minister Salim El Hoss—which resigned on June 1, 1987—instead of a transition cabinet which would assume full executive powers until the election could be held.

The President, under the terms of the constitution, may appoint a transition cabinet within 10 days of the end of his term. In this circumstance, the President could appoint anyone of his choice, including a Christian, as Prime Minister. Last week, however, the Syrians had El Hoss request the reinstatement of his old cabinet.

Through these maneuvers, Assad apparently seeks to impose the acting Prime Minister—Assad's pawn—as head of an acting cabinet. Syria would then rule Lebanon through its puppet El Hoss.

Mr. President, this is an intolerable state of affairs. Assad's intervention into the Presidential election process, not to mention his brutual occupation in Lebanon, is an affront to civilized norms of international behavior. Of course, Assad seems to care little for standards of decency; he has not hesitated to massacre his own people when it suited his purpose. The world will not forget Assad's calculated and cold-blooded murder in 1980 of some 30,000 men, women, and children in the Syrian village of Hama. With such a genocidal record at home, what can be expected of Syrian forces in Lebanon?

ASSAD'S ISOLATION AND DECLINE IN THE ARAB WORLD

Assad's unprecedented intervention into the sovereign affairs of Lebanon is an attempt to salvage what remains of his prestige in the Arab world. Syrian intervention in Lebanon is an attempt to dominate the political process. His intervention has been one of Assad's principal cards in Arab politics.

Assad's frenzied activity in Lebanon is calculated to mask the fact that he has become increasingly isolated within the Arab world. There are a number of reasons, religious and political, for his isolation.

First, his religious affiliation sets him apart from the Muslim mainstream. Assad is a member of a tiny minority sect—the Alawite Sect—which is considered heretical by the vast majority of Muslims. His Alawite status alone is enough to prevent him from reaching a credible leadership position within the Arab world. Assad knows this very well and has tried to compensate by playing in a complex and deadly bid for power and leadership.

Second, as a result of the capitulation of Iran in the Iran-Iraq War, the prestige and leadership of Iraq and Saddam Hussein as a defender of "Arab interests" has risen to new heights. Iraq has emerged with a powerful battle-hardened military whose prestige is high.

Assad is, therefore, deeply concerned because he knows that Saddam Hussein's star in Iraq is rising and that Baghdad's weight in the Arab world is increasing. The consequence is a decrease of the influence of Assad and Damascus. Furthermore, the political competition between the Syrian branch of the Baath Party with the Iraqi branch of the Baath Party for primacy and the more ancient traditional rivalry between Baghdad and Damascus for dominance in the Mesopotamian basin further complicate the situation for Assad.

KING HUSSEIN CREATES NEW SITUATION

King Hussein of Jordan, by removing Jordanian involvement in the West Bank and Palestinian issue in his declaration of July 31, of this year, has created a new situation in the Middle East.

Jordan has been involved in the West Bank area since 1948. The November 1947 U.N. partition resolution recommended the partition of Palestine into Jewish and Arab States. This was, however, a nonbinding recommendation of the General Assembly. The following year, Britain unilaterally withdrew from its mandate thereby abdicating its responsibilities and obligations of trusteeship. On May 14, 1948, Israel declared independence.

At this point, the Arab Legion under the orders of Jordan's King Abdullah—the grandfather of today's King Hussein—invaded the West Bank and later annexed it to Jordan. The Arab Legion, under British officers, was composed of nomadic Bedouins who were loyal to King Abdullah. Through the influence of the British Foreign Office, King Abdullah had been created Emir of the Trans-Jordan in 1921 by the British Crown. His family was originally from the Hejaz region which is today part of Saudi Arabia. The Trans-Jordan territory was separated from the Palestine mandate area in 1922. Except for Great Britain, no nation has ever recognized Jordan's illegal seizure of the West Bank in 1948.

Today, King Hussein has created the conditions for a diplomatic and political revolution in the region. The Jordanian withdrawal from the West Bank has placed the present status of the West Bank back to its status in 1947–48, prior to the invasion of the Arab Legion.

While the King's decision was inevitable, the timing was opportune as it followed the radicalization of Palestinian opinion on the West Bank over the last several months. Of course, the option remains for King Hussein to reassert his influence over the West Bank unless Israel precludes this by annexing the West Bank.

By washing his hands of the West Bank and Palestinian issue at this time, King Hussein has adroitly separated himself from repeated United States State Department requests and pressures to negotiate with Israel on behalf of the Palestinians. It is not surprising that the King has also chosen to shift his military purchases to Great Britain to further distance himself from Washington. The King calculated that his rule should not be impaired by the State Department's diplomatic fantasies.

King Hussein's action has led to increased isolation of Hafez Assad and to his decline in importance as a factor in Arab politics. The reason for his decline is simple. King Hussein has left the Palestinians on their own to negotiate with Israel. Israel, to date, has refrained from directly annexing the West Bank. The Palestinians must now propose a legitimate body which can negotiate directly with Israel. This task is complex considering the tortured pathways of intra-Palestinian politics and factional struggle.

Assad—who has harbored in Syria the most virulent terrorist groups such as Abu Nidal, Al Saiga, and the Habbash organization—has posed as the patron of the most militant rejectionist front in order to posture himself at the forefront of the "Arab struggle" against Israel. Assad, of course, has never wanted to directly confront Israel militarily for fear of another defeat by Israel. Now that the Palestinians have been left to themselves, at least for the time being, to choose their own competent authority to negotiate, Assad's role as a protector of the militant rejectionists is irrelevant.

Simply put, Assad can no longer pose as the primary spokesman for and protector of Palestinians. With Jordan out of the picture, the Palestinians must now fend for themselves. Most experts believe that Assad is terrified by the prospect of a Palestinian body emerging to negotiate directly with Israel. He does not want peace to be made excluding Syria while Israel occupies the Golan Heights. With such a peace, Assad will not only further lose face in the Arab world but also will find his internal political situation more tenuous owing to internal Syrian irredentist emotional pressures for the return of the Golan Heights.

I believe that Assad is also afraid that a competent Palestinian body could emerge as the sole representative of the Palestinian people, an entity which could negotiate for the establishment of a Palestinian state. If such a state were to emerge, there are of course many forms it could

assume—it could be demilitarized, it could be linked to Israel in some type of confederation with Jerusalem as a joint capital—but this is a matter for Palestinians and Israelis, not Assad nor anyone else, for that matter, to work out.

ASSAD THREATENS LEBANESE DEMOCRACY

Mr. President, Assad's transparent claim that he "confronted Israel" bears little comparison to Sadam Hussein's 8-year record of war against Iran. Because the Palestinians are currently free to act for themselves, Syria's dictator is desperate to play for high stakes in Lebanon.

Mr. President, we must never forget that Assad's rule in Syria is based upon a Soviet-supported minority Alawite dictatorship over the majority Sunni population. In fact, Assad's Alawites make up only 10 percent of the population of Syria. Such a disproportionate situation cannot last forever and Assad is the first one to recognize this fact. For this reason, Assad promotes the doctrine of Greater Syria—a program for hegemonic expansion in the region.

The first target of this program is the destruction of Lebanese democracy. Assad has created a brutal dictatorship; he does not want the example of a flourishing democracy in Lebanon for the simple reason that Syrians themselves would be moved by that example to increase their demands for democracy at home.

Mr. President, Assad's intervention in Lebanese politics can never lead to democracy or to peace in Lebanon. Assad's strategy is transparent; he wants to keep Lebanon in turmoil and to install a puppet President in Lebanon. With a puppet Lebanese President, Assad could not only have his occupation legitimized—in the fashion of Najibullah in Afghanistan—but he could also spread his troops throughout the entire country to assume total control over Lebanon. This would set the stage for an outright Syrian annexation of Lebanon.

Mr. President, the United States should make it perfectly clear to Assad that he must stop undermining the self-determination of the Lebanese, the Israelis, and the Palestinians of the West Bank and Gaza.

The situation that the Lebanese nation faces today is grave indeed. The Lebanese nation has every right to sovereignty and independence. The Lebanese nation has every right to decide upon its next President without interference from any foreign power. The Lebanese people have every right to be free from the brutal occupation of Assad's Syrian dictatorship so that they can work together to determine their own future for themselves.

TRANSITION IN CHILE

Mr. BOND. Mr. President, today an important conference is being held on Capitol Hill. The conference—sponsored by the Heritage Foundation, the Adolfo Ibanez Foundation, and the Sociedad de Famento Fabril—is entitled "The Unknown Revolution: Chile's Transition to Democracy." Members of Congress, academics, and other experts both from the United States and Chile, gathered to look at the events that are now taking place in Chile as that country prepares for its October 5 plebiscite. I had the pleasure of addressing the participants of that conference this morning and I would like to share my remarks with my colleagues because I think it is important that we all be aware of what is taking place in Chile. I ask unanimous consent that my remarks be entered in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

CHILE IN TRANSITION

It is a pleasure to be here today to open this important meeting. I would like to commend our hosts—The Heritage Foundation; the Adolfo Ibanez Foundation; y La Sociedad de Famento Fabril of Chile—for sponsoring today's conference; and I would like to thank you for inviting me to speak.

Events in Chile are moving at a rapid pace. On an almost daily basis we are hearing reports of significant developments in Chile as the people of that country prepare for the October Fifth Plebiscite.

Forums such as this one, in which scholars, government officials and other experts sit down to examine, we trust with cool heads and open minds, the events that are taking place in Chile will—I hope—play an important role in the development of future U.S. policy toward Chile. I look forward to the opportunity to hear your thoughts and ideas, and share them with my colleagues in future debates regarding Chile and Latin America.

Chile has made tremendous progress in the years since the end of the communist rule of Salvador Allende:

Its economy is one of the strongest in Latin America. Under the leadership of the "Chicago Boys", Chileans have seen the reversal of Allende's nationalization of major industries. Moreover, they have seen their economy grow at a healthy rate—more than 5 percent annually in recent years.

One of the most important factors in Chile's economic success has been the concentration on exports. Copper, of course, has always been an important export, but in recent years the Chileans have diversified into lumber and paper products, and fruits and vegetables—and the nation's salmon industry is a tremendous export success story. Developing nations throughout the world can learn much by studying Chile's recent experiences.

Paying off its external debt has been a priority in Chile. An innovative foreign investment law has played a major role in this effort. That law, when combined with success in exporting, and pro-growth economic policies has put Chile in the unique position of being able to service and, we can hope, someday pay off its foreign debt. When you consider Chile's Latin American neighbors as well as other third world countries—it is clear that Chileans can be proud of their economic accomplishments.

In recent years, Chile also has made progress in addressing social problems—housing, education and health.

According to government figures, more than half of the government's annual budget goes to special programs. For example, the government has begun an ambitious low-income housing program under which more than 900,000 units have been constructed.

In addition, daycare is available for low-income families. The centers, staffed by unemployed persons and volunteers, not only provide care, but also nutritious meals and, in some cases, shoes and clothing to children who would not otherwise have them.

In one of the programs that I personally find impressive, Chile recently instituted a program of private social security under which workers establish a personal account into which he and his employer make contributions and over which he has some control. I hope that leaders in this country will study this program for ideas that could be instituted here.

These are great successes for a country such as Chile; and I have no doubt that other nations will seek to duplicate them. Of course, the government in Santiago must continue to build on these programs in the continuing effort to deal with poverty. The progress that has already been made, however, is heartening.

In the area of civil liberties, the government continues to make progress. Unlike many nations throughout the world, Chileans have the right freely to practice their religion and to read the opposition press. The government has allowed exiles to return home and has lifted the emergency laws which were in existence. Certainly the government can make further progress in this area as it continues to follow through on its commitment to democracy, however, we must not ignore the steps that already have been taken.

Finally, there is the event which makes this meeting so timely—the October Fifth plebiscite. Next month, for the first time in 15 years, Chileans will have some say in who will lead their country. I know that there is no one here today who would not prefer to see open elections held next month, and who does not hope such elections will be held in the future. We in the United States treasure democracy, and we want to see all people throughout the world share in its benefits.

It would be a mistake, however, to let our desire for a faster timetable for the move to total democracy, or our disagreement with specific government tempt us to leaders, push Chile to the point where it becomes destabilized and thus vulnerable to Soviet subterfuge and communist terrorist violence.

It is our duty to speak out when we see wrong, and we should continue to do so. But we must do so in a positive way.

Chile has a long democratic tradition. The people of Chile, like the people of the United States, love freedom and oppose tyranny. As Chile enters this important phase in her transition back to democracy, we in the United States must find ways to be supportive and to provide advice and criticism in a constructive manner. Today's discussions are an important step in this process. I hope they will lead to a more balanced and reasoned debate in this country. I commend the sponsors for convening them, and I will

end my remarks here so that we can get underway.

BICENTENNIAL MINUTE

SEPTEMBER 17, 1976: MIKE MANSFIELD SETS A RECORD

Mr. DOLE. Mr. President, 12 years ago tomorrow, on September 17, 1976, Senate Majority Leader Mike Mansfield requested the Senate's permission to be absent for the few remaining days of the 94th Congress. In taking his leave, Mike Mansfield concluded 16 years as Senate majority leader—the longest tenure in that position in the Senate's history. Earlier that year, Senator Mansfield had announced he would not seek reelection, concluding: "There is a time to stay and a time to go. Thirty-four years is not a long time but it is time enough."

Mike Mansfield was born in New York City on March 16, 1903. When his mother died, he was sent west to live with relatives. Growing up in Montana, young Mike suffered from wanderlust. Dropping out of school, he ran off to join the Navy during the First World War. After the Navy he joined the Army, and after the Army he joined the Marines, seeing service in the North Atlantic, the Philippines, and China. He returned to Montana and with the aid of his wife, Maureen, he went back to school, eventually becoming a professor of Asian history at Montana State University.

In 1942, he was elected to the U.S. House of Representatives, and in 1952 to the U.S. Senate. Lean, lanky, and laconic, Mike Mansfield earned the trust and respect of his colleagues on both sides of the aisle. Perhaps his closest friendship in the Senate was with Vermont Republican Senator George Aiken, with whom he had breakfast every morning that the Senate was in session.

When Lyndon Johnson became Vice President in 1961, Mike Mansfield was elected majority leader. He held that post through the Kennedy, Johnson, Nixon, and Ford administrations, through the avalanche of Great Society legislation, the turmoil of the Vietnam war, and the trauma of Watergate. Later President Carter appointed him Ambassador to Japan, and President Reagan has kept him there as well, another measure of the bipartisan respect and admiration with which we hold him.

CONGRATULATIONS TO THE WINNING CREW OF THE "STARS AND STRIPES"

Mr. DODD. Mr. President, I would like to take this opportunity to say a few words of congratulations to the people who were involved in the successful defense of the most prestigious of boating titles, the America's Cup. We have witnessed two of the most spectacular races in the history of the cup, and it was only through the cooperation of a large number of brave and talented individuals that victories of such magnitude could be attained.

Our heartiest praise is due to Dennis Conner, skipper of the *Stars and Stripes.* This year marks the third time Mr. Conner has led an American team to triumph in this long-running challenge. His skillful leadership of the crew helped them sail to winning margins of more than 18 minutes in the first race, and more than 21 minutes in the second.

This year's challenge was marked by the introduction of a form of boating technology new to the America's Cup. The innovative catamaran design with its solid wing-sail allowed the *Stars and Stripes* to reach speeds of more than 20 knots in the course of the race.

I am proud to say that many of those who had roles in the victory of the *Stars and Stripes* come from the State of Connecticut.

Anthony DiMauro can safely be called the grandfather of wing-sail technology. Twenty years ago Tony, a native of the city of Norwalk, realized that solid sails could enhance the performance of the basic catamaran design. He has worked tirelessly to perfect this design, and last week he saw the fruits of his labor.

Teaming with Tony over the years of development of the wing-sailed catamaran was David Hubbard of Stamford. Hubbard later joined with Duncan MacLane of Shelton, Brittain Chance of Essex, and Bernard Nivelt of Mystic to design the *Stars and Stripes.* Overseeing construction of the solid sails used in the final design were Terry Richards and Pieter den Hartog, both Norwalk residents.

Five engineers from Sikorsky Aircraft of Stratford worked as consultants for Sail America. George Schneider of Stratford, Alan Dobyns of Milford, Dennis McCarthy of Hamden, Wiliam Beck of Milford and William Dickerson of Branford spent 3 months testing and fine-tuning the hull and mast design of four preliminary models.

Richard McCurdy, a resident of Darien and vice president of Ockham Instruments of Stratford, designed the computers for *Stars and Stripes,* as he has for every U.S. boat in America's Cup competitions since 1964.

Several Connecticut natives served on the crew of the *Stars and Stripes* as well. Peter Isler, who was raised in Norwalk, was navigator on the boat, and Thomas Whidden of Essex was the boat's tactician. These two men served with Dennis Conner when the cup was wrested away from Australia. They were joined by Duncan MacLane and by Louis "Skip" Banks of Norwalk, who, together with Pieter den Hartog, had sailed to triumph in the preliminary trials to select the American entrant. Their experience with solid wing-sailed catamarans made them invaluable to Conner's team.

From the *Turtle,* a submarine designed by David Bushnell in 1776, to the great wooden whaling vessels of the 19th century, to the *Nautilus* which sailed under the North Pole in 1958, tremendous advances in maritime design have sprung from the creativity of Connecticut residents. The fact that the America's Cup has remained in the possession of American teams for virtually all of its 137-year history testifies that our entire Nation continues to maintain a distinguished maritime tradition.

Mr. President, I am proud to see that so many of those responsible for our Nation's latest sailing triumph come from Connecticut, and I am proud today to be able to honor them, and indeed to honor everyone involved in the magnificent victory of the *Stars and Stripes.*

CONGRESSIONAL PAY ACCOUNTABILITY AMENDMENT

Mr. PRESSLER. Mr. President, it is my intention to offer to S. 837, the Minimum Wage bill, an amendment to prohibit back-door congressional pay raises. This amendment provides that, before Members of Congress may receive a pay raise, Congress must pass, by recorded vote, a joint resolution of approval. The joint resolution shall relate only to the issue of a congressional pay raise.

The way the system works now, it is easier for Members of Congress to receive a pay raise than to reject one. However, to increase the Federal minimum wage, legislation must be passed and signed into law. We need reform. I find it ironic that Congress requires a vote to raise low-income workers' pay by 40 cents per hour when Members of Congress can give themselves a $12,000 increase without a vote.

The working people of America deserve accountability. This is not an argument over the amount of congressional pay raises, but on the manner in which we allow them to be passed. Let's apply the same rules to ourselves that apply to other Americans. If a vote is required to increase the Federal minimum wage, it also should be required to increase our salaries.

Personally, I always have opposed every pay raise offered. But, if others think a congressional pay raise is needed, then the question should stand alone. We should be ashamed of the manner in which we've allowed congressional pay raises to be passed. This double standard has to stop. No vote, no raise. It is as simple as that.

Mr. President, I ask unanimous consent that a copy of my amendment and "Dear Colleague" letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

At the end of the bill, add the following new section:

SEC. 5. PAY OF MEMBERS OF CONGRESS.

(a) SHORT TITLE.—This section may be cited as the "Congressional Pay Accountability Act of 1988".

(b) CONGRESSIONAL VOTE ON PRESIDENTIAL RECOMMENDATIONS TO INCREASE CONGRESSIONAL RATES OF PAY.—Section 225(i) of the Federal Salary Act of 1967 (2 U.S.C. 359) is amended to read as follows:

"(i) EFFECTIVE DATE OF PRESIDENTIAL RECOMMENDATIONS; CONGRESSIONAL VOTE ON INCREASES IN CONGRESSIONAL RATES OF PAY.—(1)(A) Except for the recommendations relating to Members of Congress (which shall be subject to the provisions of paragraph (2)), the recommendations of the President which are transmitted to the Congress pursuant to subsection (h) of this section shall be effective as provided in subparagraph (B) of this paragraph, unless any such recommendation is disapproved by a joint resolution agreed to by the Congress not later than the last day of the 30-day period which begins on the date on which such recommendations are transmitted to the Congress.

"(B) The effective date of the rate or rates of pay which take effect for an office or position under subparagraph (A) of this paragraph shall be the first day of the first pay period which begins for such office or position after the end of the 30-day period described in such paragraph.

"(2)(A) The recommendations of the President relating to the rates of pay of Members of Congress which are transmitted to the Congress under subsection (h) of this section shall become effective only after the enactment of a joint resolution as provided under subparagraph (B).

"(B) The joint resolution described under subparagraph (A) shall—

"(i) relate only to the issue of such recommendation to increase the rates of pay of Members of Congress; and

"(ii) be recorded to reflect the vote of each Member of Congress thereon.

"(C) For purposes of this paragraph the term "Members of Congress" includes all positions described under section 225(f)(A), except for the Vice President of the United States.".

(c) CONGRESSIONAL VOTE TO INCREASE CONGRESSIONAL RATES OF PAY WITH INCREASES IN THE GENERAL SCHEDULE.—Section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) is amended to read as follows:

"(2)(A) Any increase in the rates of pay of Members of Congress which corresponds to an increase in the rates of pay in the General Schedule under section 5305 of title 5, United States Code, in any fiscal year shall become effective only after enactment of a joint resolution as provided under subparagraph (B).

"(B) The joint resolution described under subparagraph (A) shall—

"(i) relate only to the issue of the increase in the rates of pay of Members of Congress; and

"(ii) be recorded to reflect the vote of each Member of Congress thereon.

"(C) If a joint resolution is enacted as provided under subparagraphs (A) and (B), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which such joint resolution is enacted, each annual rate of pay of Members of Congress shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the percentage of such annual rate which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under section 5305) of the adjustment in the rates of pay under the General Schedule.".

(d) CONGRESSIONAL VOTE ON ANY INCREASE IN THE RATES OF PAY OF MEMBERS OF CONGRESS.—(1) Notwithstanding any other provision of law, any increase in the rates of pay of Members of Congress shall become effective only after the enactment of a joint resolution as provided in subsection (b).

(2) The joint resolution described under subsection (a) shall—

(A) relate only to the issue of the increase in the rates of pay of Members of Congress; and

(B) be recorded to reflect the vote of each Member of Congress thereon.

U.S. SENATE,
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION,
Washington, DC, September 15, 1988.

DEAR COLLEAGUE: On August 4, 1988, I introduced the Congressional Pay Accountability Act (S. 2682). This Act would prohibit back-door pay raises for Members of Congress. I plan to offer this bill as an amendment to S. 837, the Minimum Wage Restoration Act. Enclosed is a copy of my amendment.

The way the system works now, it is easier for Members of Congress to receive a pay raise than to reject one. I find it ironic that Congress requires a vote to raise some low-income workers' pay by forty cents when Members of Congress can give themselves a $12,000 increase without a vote. We need reform.

My amendment is very simple. It provides that before Members of Congress may receive a pay raise, Congress must pass, by recorded vote, a joint resolution of approval. The joint resolution shall relate only to the issue of a congressional pay raise.

The working people of America deserve accountability. This is not an argument over the amount of congressional pay raises, but on the manner in which we allow them to be passed. Let's apply the same rules to ourselves that we apply to other Americans. If a vote is required to increase the Federal minimum wage, it also should be required to increase our salaries. If you have any questions or are interested in cosponsoring the Congressional Pay Accountablity Amendment, please have your staff call Shelly Haahr at 4-5842.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

MINIMUM WAGE RESTORATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the pending business, S. 837, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 837) to amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Hatch Amendment No. 3040, to provide for a new hire wage.

(2) Kennedy Amendment No. 3041 (to Amendment No. 3040), of a perfecting nature.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the qourum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3041 TO AMENDMENT NO. 3040

Mr. KENNEDY. Mr. President, the working poor of this country have been waiting 8 years for a cost-of-living increase. It is appropriate that on this, the 50th anniversary of the Fair Labor Standards Act, Congress is moving forward to restore the vitality of the minimum wage.

For 50 years, we have had a national policy that the minimum wage should be a living wage. Six times Congress has revisited the issue, and six times Congress has reaffirmed this important public policy of decent minimum pay standards for America's workers.

The current minimum wage has fallen to the lowest real value in this 50-year period. Today's minimum of $3.35 represents only 36 percent of the average hourly earnings. Historically, the minimum has been maintained at a figure of one-half the hourly earnings, and congressional action to restore the minimum wage is long overdue.

Our committee bill, S. 837, will raise the minimum wage by 40 cent increments each of the next 3 years. This will increase the minimum to $3.75 in 1989, $4.15 in 1990, and $4.55 in 1991, a 35.8 percent increase. It also adjusts the retail small business threshold test from the current $362,000 to $500,000 in annual gross volume of sales, a 37.9 percent increase.

The minimum wage was last raised in January 1981. The intervening years since then represent the longest spell without an increase since the wage floor was established in 1938. By any measure of its value, the current minimum provides less protection, less food, less clothing, less fuel for the minimum wage earner than it has in decades. It is a sad statement that a person who works full time year-round at the minimum wage will only bring a family of three to less than 80 percent

of the poverty line. The current minimum wage is a poverty wage.

If an individual works a 40-hour week at the minimum wage, he will receive $134 before taxes and social security are deducted. No one who works 8 hours a day, 5 days a week should be condemned to a lifetime of poverty. How many of us in this Chamber think we could live on $134 a week?

In 1986 more than 5 million workers paid by the hour earned the minimum wage or less. Another 1.7 million salaried workers earned less than the minimum. An additional 11.5 million hourly and salaried workers earned between $3.35 and $4.50. Some 15 million Americans will benefit directly from this bill.

A minimum wage increase to $4.55 will have a wide range of beneficial consequences. It will provide a cash infusion to millions of workers without expanding Federal outlays. It will represent a statement by our society that compensation for work done should meet a certain basic living standard. The minimum wage floor was created in 1938 to provide minimally acceptable living conditions, but it has deteriorated to a point where it no longer serves its purpose. Those workers with no political clout, no union, no bargaining position are reliant upon Congress and society to provide them with a decent and livable wage.

The increased minimum wage can also provide incentives and the wherewithal for workers to accept jobs they might otherwise have to turn down because the job-related costs of transportation, day care, and taxes outweigh earnings of a current minimum wage job. A livable wage will also make work a more attractive option for those who might choose welfare assistance over employment out of necessity.

Raising the minimum wage to a sufficient level will lift many individuals out of poverty and diminish its severity for many others. It will help workers who are near-poor. It will enable earners in families just above the poverty line to provide more than just the bare necessities. In 1986 there were almost 9 million working poor in the United States, 2 million of whom worked full time year round.

Nonpoverty workers at the minimum wage will also benefit. For example, teens and young adults attempting to meet college expenses have witnessed a 73-percent increase in private college tuition and a 61-percent increase in public college tuition since the minimum was last adjusted in 1981. Seventy percent of middle-income students depend on their earnings for college expenses, and since 1981, students have had to increase their borrowing by over 40 percent.

I was pleased to hear recently that Vice President BUSH is now in favor of an increase in the minimum wage. I only wish that he had spoken up sooner. Perhaps, if he had, we would already have passed this bill. I must say that his silence has been deafening during the debate on this bill.

Shortly after his election in 1980, President Reagan said that the minimum wage "has caused more misery and unemployment than anything since the Great Depression." But the Vice President was silent.

In March 1987, when the President's Economic Policy Council unanimously voted to oppose any increase in the current minimum wage, the Vice President was silent.

When then Secretary of Labor Brock testified before the Labor Committee and said, "Make no mistake: This administration believes that an increase in the minimum wage is bad policy and we oppose it," the Vice President was silent.

In May of this year when the Chairman of the White House Council of Economic Advisers declared that "the best policy remains no increase" in the minimum wage, the Vice President was again silent.

Now, in an obvious election year concession, the Vice President and the Secretary of Labor support a "modest" increase in the wage. I think that the 15 million Americans who have been waiting for nearly a decade for a simple cost-of-living increase have every right to ask where GEORGE has been while his administration has fought tooth and claw to keep their wages down.

But we are still waiting to hear what kind of an increase they will propose. Senator QUAYLE filed an amendment during committee consideration to increase the wage to $4 over 2 years. That is not a serious proposal. If we are to take action to amend the wage, we must make it a livable wage. Let us be crystal clear about the difference between a $4 minimum and what we propose. The difference is about 50 cents an hour; $4 a day. That $4 a day is the difference between a subpoverty wage and a wage that will pull a family of three out of poverty, $4 a day for the working poor so that they do not have to be poor.

It is one thing to be silent for 8 years on the working poor; but I think it is outrageous that at this late date when the Vice President has finally chosen to speak up, he comes out in favor of a subpoverty wage.

GEORGE BUSH and DAN QUAYLE say that they favor an increase in the minimum wage, but $4 an hour is only $3.07 an hour in 1981 dollars—so here is the Vice President's proposal: His proposal would be a cut in the minimum wage of 10 percent from where it was when he took office. And from that miserly floor, he proposes a further cut for all new hires. This is the strangest election year promise I have ever seen. The promise to raise the wage has already been broken because the proposed increase is in fact two cuts. There are surely overpaid lobbyists all over town giggling in the recesses of their offices about the Trojan horse that the Republicans have dispatched to the homes of America's working poor. Well, it will not work—in the course of this debate, we are going to smoke the wolves out and show them for what they are—or else we are going to get a reasonable agreement to restore the minimum wage.

The sponsors of the Minimum Wage Restoration Act, myself included, have already made substantial concessions. To go any lower would fall too far short of our original intent to restore the purchasing power of the working poor to where it was in 1981. We dropped the indexing provision in committee, but we have settled on a phased increase that will at least bring the minimum wage to 45.9 percent of the average hourly earnings by 1991.

To be credible, an increase in the minimum wage must be a substantial increase, not a token increase. In fact, a recent Gallup poll shows that 67 percent of Republicans favor an increase to $5.05 an hour, even after being informed of the traditional arguments against an increase—67 percent.

Our committee considered this issue exhaustively during three comprehensive hearings. Witnesses from the administration were vehemently opposed to any increase. We heard from groups and economists opposed to an increase and groups and economists strongly in favor of an increase. Our committee was deluged with statistical data, numbers, graphs, studies, and computer printouts. But the most telling testimony came from witnesses who work at the minimum wage.

We heard from Shirley and John Slagle, of Kittaning, PA. They support themselves and their young asthmatic son by each working 40 hours a week at the minimum wage. They earn $672 a month and after they pay their bills they are left with $82.

We heard from Rena Blankenship, of Newcastle, VA, who was trying to raise her three children by holding down a minimum wage manufacturing job. It became too much for her and she turned to welfare and food stamps. It was a heart wrenching story told by a proud woman who struggles every day to hold her head high. She would rather work than live on welfare, and we owe her that chance. We must be able to look past the charts and figures and see the people—millions of individual Americans who perform the Nation's most thankless tasks, for the most thankless pay. We have ignored their plight for 8 years—and now it is time to make amends.

Now I ask that the Members and all those listening turn their attention to the pending amendments. Senator

HATCH's amendment is pending in the first degree, and my amendment is in the second degree.

Mr. President, we have before us an odd animal not traveling under its real name. The first degree amendment before us has been called by its sponsors the "training wage." They call it that because they say that it will lead employers to hire people and train them for 90 days and then hire them on at the full wage. I am going to examine that theory and see if it works.

The first thing I notice about this training wage is that it does not require employers to do any training of employees. A training wage without training. Already the label that the amendment's proponents have put on this package is beginning to slip off of the box.

The second thing that becomes apparent when we look at this proposal is even worse—not only does the amendment not require any training, the jobs that are covered by the amendment do not require any training either. The top 10 minimum wage jobs, which account for 74 percent of all minimum wage jobs, include food service, retail sales, clericals, janitors, personal service, material handlers, and laborers. Food service jobs alone account for 28 percent of the jobs paying the minimum wage. A study by Arthur D. Little for the National Restaurant Association found that the vast majority of food service workers do not require any training at all. The same study found that in the following occupations 75 percent of the workers require not even a day of training: Household cleaners and workers; service station workers; sales counter clerks; farm workers, and others.

Now I want to know: Who in this body honestly believes that it takes 90 days to train somebody to flip a hamburger? Who in this body honestly believes that it takes 3 months for someone to learn to mop a floor or change the sheets on a bed? No one honestly believes that. Senator HATCH, before he became a Senator, worked for a time as a janitor—does anyone really think that it took Senator HATCH 3 months to learn to sweep the floor? Of course not, and that is why this amendment should be rejected now that it has come to the floor of the U.S. Senate.

These jobs require at most a couple days of training, but the proposal to cut the wage of these workers chisels their wages for 90 days.

The amendment cannot be called a training wage because neither the amendment nor the jobs it covers require any serious training. The amendment will not cause any training to happen, so in searching for a name for this proposal, let us ask what it will do.

The first thing it will do is save millions of dollars for low-wage employers with high employee turnover. There are hundreds of low wage employers with 400 percent turnover rates. That means that on average these employers already get rid of their employees every 90 days. So this amendment is a pure and simple wage cut for those employers. This amendment is not a training wage for those employers—it is a windfall wage. They will get to pay lower wages for doing exactly what they do now.

But that is not the only surprise hidden in this proposal. The real surprise will come when other employers will see to it that their employees leave after the training period expires. The advocates of the amendment say that their plan will give employers an incentive to hire these workers because they can pay them less—but the incentive to keep paying less does not go away at the end of 90 days. When trainees come to the 90-day cliff, employers will have a powerful economic incentive to push that batch of trainees off and start in with a new batch of trainees. Working people all over this country will get the Bush-push into the unemployment lines once every 90 days if the Republican plan is adopted.

What a gift. What an outstanding act of generosity from the Republican alternative. Can this be what GEORGE BUSH means when he talks about a kinder, gentler America? I think we have come to the point where the false labels have come off of the Republican package, and now that we see what is really inside that box we can name it—this is the "hire 'em and fire 'em" wage. Maybe we can call it the "churn 'em and burn 'em" wage—I will let the amendment's sponsors choose. But it is a fraud on the working people of this country to call this a training wage.

The effects of the turnover that this wage will encourage and subsidize will be felt all across this country. Consider the effect it will have in nursing homes. Already, nurse aides in California have a 100 percent turnover rate which has reduced the quality of care that the elderly receive. This amendment would richly reward employers for making this even worse.

And consider the effect on workers. Already, millions of minimum wage workers are struggling to make ends meet working full-time, year long at their jobs. If this amendment became law, employers would be rewarded for throwing the working poor out of their jobs every 90 days.

I am talking about parents with children to feed and rent to pay. It is offensive enough that this proposal would cut the pay of all of these workers. It would be an outrage to adopt a plan that actually paid employers to throw working families out on the street once every 90 days. The working poor would become the wandering poor as well, struggling from job to job, as they received a Bush-push out of their jobs every 3 months. The Bush-push will turn America's working people into vagabonds and gypsies, thrown from job to job every three months. This Bush proposal adds new meaning to the term seasonal unemployment—now people lose their jobs every time the seasons change.

In addition to making gypsies out of those working at the minimum wage, the Republican alternative will create a strong incentive for employers to pay students to drop out by offering them money for leaving school. The amendment's sponsors say that this proposal is designed to create jobs that do not now exist for kids who do not now have them. But where are those kids now? Most of them are in school, and that is where they belong. There are kids all over this country who are completing their educations because the best offer they have comes from finishing school. Every student who drops out of school because of the Republican plan will lose hundreds of thousands of dollars in a lifetime just so we can save employers a few dimes an hour. That tradeoff is totally unacceptable. Every class of high school dropouts costs this Nation hundreds of billions of dollars. Every class of high school dropouts costs the Treasury tens of billions of dollars in lost revenue. At a time like this, when this Nation is already desperately short of the trained workers, we need to compete with the world, a plan that by design and effect will pay people to drop out of school should be overwhelmingly rejected.

This question has already been debated. Senator HATCH had the opportunity to debate the last great mayor of Chicago, Harold Washington, on this very issue. The mayor also served the city of Chicago as a Member of Congress and knew quite a bit about the workings of the inner city.

When Senator HATCH explained that a wage differential would create jobs for ghetto youth and enable them to become productive members of society Mayor Washington replied:

> It is criminal to hold out to unemployed youth across this country—particularly in the inner cities where jobs are wanted so drastically—to hold out that there is a possibility through some technical contrivance such as this that jobs will be created . . . I know of no cogent credible study which indicates that by a subminimum wage you will create jobs.

There we have our debate and its resolution. The "hire 'em and fire 'em" wage will cause unemployment for the working poor; it will cause lower wages for working people; it will cause students to drop out of school. It is not often that we see such a highly touted idea that is such an utter failure as a

matter of policy. It is even less frequent that we see a proposal with as misleading a label as this one had when it began. It just goes to show that you cannot judge a Bush by its cover.

Mr. President, I have spoken at some length and in detail on the variety of reasons why an across-the-board subminimum wage would be subminimum public policy. Let me now describe my proposal. It is the pending second degree amendment to the "hire 'em and fire 'em" wage.

Current law already contains a youth differential for full time students. If the concern is really for our youth, then let us not create an incentive for employers to entice kids out of school with the promise of a job at subminimum wage learning subminimum skills and preparing them for a subminimum life.

If this body wants to do something to help the earning prospects of our Nation's youth, we have to encourage them to stay in school—not to drop out.

Current law has such a subminimum program already in place. Section 14(b) of the FLSA provides that employers may hire students at 85 percent of $3.35—$2.85 an hour—by filling out a simple form and mailing it to the Department of Labor. The bill before the Senate does not alter that program, so employers could continue to hire full-time students at 85 percent of $3.75 in the first year ($3.19); 85 percent of $4.15 in the second year ($3.52); and 85 percent of $4.55 in the third year ($3.87).

But the program requires the youth remain in school as full-time students, and limits their hours per week to 20.

Why restrict this program to those remaining in school?

Because it is only by staying in school, and graduating from high school, will our youth gain the education and skills they need to compete in the work force in the 21st century and to make America competitive in the coming century. A male who graduates from high school will earn over $260,000 more than if he drops out, in 1981 dollars, according to a 1983 Census Bureau study. In today's dollars that would be $325,000.

The cost of dropouts to our society is staggering. James Catterall of UCLA estimated the total earnings loss to society for a single year's class of dropouts was $228 billion, with a loss of tax revenue of $68.4 billion. Per year.

The Committee for Economic Development found in a 1986 study on "Children in Need: Investment Strategies for the Educationally Disadvantaged" concluded the cost was over $240 billion in lost wages and tax revenue alone.

Why limit the hours of work permitted to 20 hours a week, except of course for vacations?

Because study after study has demonstrated that when high school students work more than 20 hours a week, their grades suffer significantly. In a recent study at George Washington University entitled "Intense Employment While in High School," the authors concluded that even among collegebound students, "Mean grade point average was found to be significantly lower among those who were employed more than 20 hours per week compared to those working fewer hours."

So what do we do to best equip our youth for the work force and careers of tomorrow? One thing we do not do is to give employers a wage incentive to lure them from school to flip burgers, or an incentive to work cheaper wage youth long hours to the detriment of their real job—completing their education.

That is what the across-the-board subminimum would accomplish. I call it the Republican dropout wage.

If this body is convinced something needs to be done, then let us expand the existing subminimum program for full-time students and make it easier for employers to participate, yet protecting our youth at the same time.

My amendment will expand, simplify, and streamline this viable program in three significant ways:

The current law limits the program to six students per employer, and has a complicated hours-of-work limitation formula.

What I propose we do is:

First, double the number of students an employer can hire from 6 to 12;

Second, eliminate the confusing limitation on hours formula which confuses many employers and only require they not fill more than 10 percent of working hours with student workers. Teenagers are 9 percent of the work force: This provision gives them their fair share of the work; and

Third, make clear in the statute that an employer does not have to wait for DOL approval before hiring at the lower wage in accordance with the statute.

All an employer would have to do would be to send to DOL a listing of the name, address, and type of business, the date he began business, and a statement that the hiring of the full-time students will not reduce the full-time employment of other employees. Once the employer drops that in the mailbox, he or she can begin hiring at the lower rate.

This will simplify and expand a program which in the past, employers have utilized extensively. In 1978, over 500,000 full-time students were employed under this program.

But our youth can only participate in this program if they stay in school, and work no more than 20 hours a week.

Keeping our youth in school, and to the extent feasible ensuring that their full time job is finishing, is a far sounder approach to youth employment policy than creating a subminimum dropout wage.

I hope my colleagues see the wisdom of the Democratic stay-in-school wage as a much more acceptable policy than the Republican dropout wage. The last thing this country needs as we head into the next century of global competition is to give our students a Bush-push out of school.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, S. 837, the Minimum Wage Restoration Act of 1987, would amend the Fair Labor Standards Act of 1938 to increase to unreasonable levels the minimum wage paid to persons working under hourly pay scales. The supporters of this measure assert that its purpose is to help our country's working poor support their families. However, the evidence simply does not support the allegation that a sizable increase in the minimum wage rate would significantly benefit the most disadvantaged workers in our Nation.

In practice, this legislation will not enable a large population of working poor to support their families, because there is not a large segment of our citizenry that is composed of minimum wage earners who are heads of households. According to the U.S. Department of Labor, just 1 percent of all American workers earning minimum wage are below the poverty threshold. Seventy percent of workers earning the minimum wage reside in a family in which the income is at least 150 percent above the poverty threshold. Furthermore, nearly half of the heads of impoverished households in the United States are not in the labor force.

Historically, studies have shown that increasing the minimum wage rate has had no impact on poverty and has only slightly increased or even decreased the equality of income distribution. In analyzing over 20 studies conducted by economists since 1983, the General Accounting Office has noted that these surveys reveal that employment is less than it would be if there were not a minimum wage in existence.

Who then really stands to benefit most from a higher minimum wage, Mr. President? Rhetoric cloaked in terms of fairness for disadvantaged workers does not obscure the view of the real beneficiaries of an increased minimum wage, "big labor." Minimum wage legislation has always been promoted by labor unions and other special interest groups for their purely self-serving political considerations. The labor unions in our country are

looking to this measure as a means of securing their positions and turning around a decline in membership that they have experienced in recent years.

Mr. President, the Congressional Budget Office has predicted that raising the minimum wage to $4.65 per hour, as originally proposed, could cause the loss of 250,000 to 500,000 jobs in the United States, as well as add approximately 0.2 to 0.3 percentage points to our Nation's annual inflation rate. The South, an area that is already struggling with unemployment problems, would be heavily impacted by such a move. A recent study, conducted by the University of Chicago projected that raising the minimum wage rate to $4.65 per hour would cause South Carolina to loose 10,354 jobs by 1990. A Clemson University survey estimated that such an increase would result in the loss of 1.9 million jobs nationally, and 15,193 positions in South Carolina by 1995.

In simplistic terms, when a higher minimum wage rate is imposed on the business community, it is faced with the dilemma of how to meet the new labor costs. If business cannot pass along increased costs, it must absorb them. In order to absorb these costs, employers must restructure their work force by implementing such measures as: eliminating those workers considered to be the least productive; limiting the amount of hours that employees are permitted to work; leaving vacant positions unfilled; consolidating jobs through automation; and reducing production.

Unfortunately, America's teenagers stand to suffer the most from the adaptations that business and industry must make in order to comply with an increase in the minimum wage. These young workers generally have limited experience and have not developed skills; therefore, they are considered to be the least productive employees. Thus, legislation creating a high minimum wage in effect excludes the least employable by pricing them out of the job market.

An increased minimum wage adversely impacts teenagers in two significant ways. First, these young people who lose their jobs experience an immediate loss of income. Second, because they are removed from the workplace, teenagers are prevented from acquiring valuable experience and skills that are necessary to allow them to progress into higher wage level positions in the future.

The Bureau of Labor Statistics has determined that the present unemployment rate for all teenagers actively seeking work is 16.5 percent. The unemployment rate for black teenagers currently seeking employment is, at 36.9 percent, more than double the overall average for teenagers in the United States.

According to the report of the Minimum Wage Study Commission in 1981, the last increase in the minimum wage floor, which was enacted in 1977, resulted in the loss of 644,000 jobs among teenagers alone between 1977 and 1981. A recently released study by economists at Clemson University, estimated that an increase in the minimum wage to $4.65 an hour would result in 1.3 million teenagers being out of work by 1995.

It is clear that teenagers and persons seeking entry-level positions would be the primary victims, through loss of employment, of a significant increase in the minimum wage rate. Certainly, Congress should not deny the very persons who represent our Nation's future the opportunity to participate in the labor force, by rendering them unemployable.

Mr. President, alternatives to significantly increasing the minimum wage floor exist to assist our Nation's young people in entering the work force. A youth wage differential, such as a training wage, would provide an equitable means of correcting the disparity in skills of teenagers who are seeking entry level positions.

Also, expansion of the earned income tax credit would permit low-wage-earner families to receive a refundable tax credit on earned income. This refundable credit could be applied throughout the year as a regular supplement to the worker's paycheck.

These proposals merit our careful consideration. Simply raising the minimum wage floor is not the answer.

Mr. President, I am opposed to a significant increase in the minimum wage rate because: it is inflationary; it reduces entry-level and part-time jobs for teenagers and unskilled workers; as well as decreases services to consumers. I urge my colleagues to join me in opposing this measure.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I was interested in the comments about the support for the earned tax credit. If I could have the attention of the Senator from South Carolina, in terms of the tax credit, is he supporting the tax credit program for the workers as an alternative to the increase?

Mr. THURMOND. I think it is worth exploring, and I am going to look at it.

Mr. KENNEDY. The interesting projections are that it would cost about $4 billion in 3 years and about $6 billion in 5 years. I think there are some features of that program which have been built in now which I could support. However, I am really quite surprised that the Senator from South Carolina would support that type of a program which would cost about $6 billion more in terms of the deficit; why he would support a tax program which has the effect of making the Federal Treasury pay for the substitute. It ought to be a legitimate responsibility of employers to pay decent wages.

That is an incredible reversal to have the Federal Government bailing out the employers who pay low wages.

Mr. THURMOND. Will the Senator yield?

Mr. KENNEDY. I will be glad to yield on this. I do admit it has an attractive feature and that it takes into consideration the size of individual farmers, but given the size of the budget deficit at the present time, I was really quite interested in the view of the Senator from South Carolina.

Mr. THURMOND. Mr. President, I explained to the Senator from Massachusetts that I think that it is a proposal worth exploring. I wish to study it carefully before making any final decision.

Mr. KENNEDY. Fine. If I could just ask the Senator, does the Senator remember the last time that we had a minimum wage vote here in the U.S. Senate?

Mr. THURMOND. 1977, I believe was the last time.

Mr. KENNEDY. Does the Senator remember whether he voted in favor or was opposed to that measure?

Mr. THURMOND. Yes, I voted in favor of that measure.

Mr. KENNEDY. Oh, the Senator voted in favor.

Mr. THURMOND. Are you not disappointed?

Mr. KENNEDY. No, I just wish we had that enlightened judgment on this particular measure.

Mr. THURMOND. That is your opinion about what is enlightened. I do not see it the way you do.

Mr. KENNEDY. The same arguments were used at that time. What were the real matters that brought the Senator to support it at that time? Does the Senator remember why he supported it at that time?

Mr. THURMOND. At that time, the minimum wage was low and the amount that it was proposed to be raised to was reasonable, so I voted for it. It was raised by only 25 cents an hour at that time.

Mr. KENNEDY. The fact is that in terms of the percentage of hourly wages, it was higher than it is now. So in terms of the purchasing power, it is actually lower at the present time.

In any event, I appreciate the responses of the Senator from South Carolina. I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I want to speak in general on the minimum wage, and a little later on I will be proposing an amendment to take care of what I think is a major defect in this bill.

This bill, as it is now introduced, does not apply to Puerto Rico. Puerto Rico is now covered by the minimum wage.

I think it is a great mistake to create two tiers of Americans—all those in the 50 States who are covered by the minimum wage and then to create second class citizens in Puerto Rico. But I will speak on that a little later.

My friend and colleague from South Carolina, the distinguished Senator, STROM THURMOND, mentioned some studies that showed that there will be some inflation, some loss of jobs. The best study I have seen at this point is the Wharton School study which suggests that there could be as much as 100,000 jobs lost and the maximum inflation impact would be two-tenths of 1 percent over a 3-year period.

I think on balance when you weigh that against the good that can be done through the minimum wage, it is very clear the good outweighs any possible defect in the minimum wage.

It is also true that there are mixed studies on what a minimum wage does in terms of youth unemployment. There is some evidence that it does encourage youth unemployment. The question is whether we use the approach suggested by my colleague, Senator HATCH, or whether we use the approach offered by Senator KENNEDY. The Kennedy approach increases the number of students who could be exempt from 6 to 12, which seems to me to be the proper answer because it urges young people to stay in school. But I think the most basic question we face with the minimum wage is the question, Whom will we serve? It is true that the people who are paid the low wages are not contributors to our campaigns, but those are the people we ought to be thinking about when we sit in the Senate. Do we serve the wishes of the influential, the powerful, the wealthy, or do we serve the interests of the people who really need help in our society? That is the fundamental question.

I remember when I was in the State legislature I introduced a bill—we had no minimum wage in Illinois—to have a 75-cent-an-hour minimum wage. We had a witness, a woman whose husband left her. She was trying to support two children on 57 cents an hour—tragic. I wish we could right here on the floor of the Senate bring in some people who are trying to maintain families. I heard my distinguished friend from South Carolina talk about teenagers, and a lot of people, when they think of the minimum wage, think of teenagers. Twenty-six percent of the people who receive the minimum wage are heads of households, people who desperately need a lift. We ought to be giving them that lift.

You talk about the differential between men and women, which is gradually being closed in our society but it is still substantial. A woman working full time today in our society makes 66 cents compared to a man making $1. Sixty-two percent of those who earn the minimum wage today are women.

I think we clearly ought to be moving in this direction. We ought to be helping people who really need help, lift people who are working and working hard who want to do better, and this is the opportunity to do it.

The minimum wage that is being asked here is not as great as the increase in the cost of living when $3.35 was imposed. It is not unreasonable. I think we ought to move ahead. I hope we will move ahead and do it with a resounding vote. I gather that we may even have bipartisan support when it gets down to the final vote. I hope we do. It should not be a partisan issue.

Mr. KENNEDY. Will the Senator yield on that point?

Mr. SIMON. I will be pleased to yield.

Mr. KENNEDY. The Senator is quite right that it should not be a partisan issue. The minimum wage was increased three times during the Eisenhower administration and during the 1960's and 1970's was maintained when we had Republican Presidents and Democratic Congresses. It was basically maintained at the poverty level. It has really only been in the last 7 years that it has had this significant decline. That is really what has brought about this concern.

Mr. SIMON. If I may ask my colleague—I do not know the answer to this. I do not recall any period where we went this long without raising the minimum wage—has there been a period this long?

Mr. KENNEDY. The Senator is correct. We had phased in past legislation over a period triggered in terms of future years. But the Senator is quite correct.

I wish to raise just a few points. I thought we would have the opportunity to have some debate on this matter.

Mr. SIMON. I will yield the floor to the Senator from Massachusetts. I have concluded my remarks.

THE PRESIDING OFFICER (Mr. FORD). The Senator from Massachusetts is recognized.

Mr. KENNEDY. When we come to the point in evaluating what the historic pattern has been with the raise in the minimum wage and what the implication has been in terms of employment, teenage unemployment, and general economic conditions, it is very instructive. The arguments that we have heard even in the brief debate of last night and this morning about the cost of jobs, the impact in terms of inflation, what it is going to mean in the overall economic condition, have been made the last six times we have debated this issue. Virtually the same arguments, and we will put in the RECORD what the effect of the minimum wage has been. It has been actually to the contrary. We find unemployment has gone down even in the teenage category. The general economic conditions have been unrelated to those alterations and changes.

For those who are not in attendance but are listening, I will ensure that those are made a part of the RECORD. I think it is important to put this into some historic perspective because we hear virtually the same arguments made—loss of jobs, loss of teenage jobs, increasing unemployment, and adverse economic conditions. That really has not been the case.

I have that here, but I see our colleague from Utah, and we will come back to that later in the debate.

Mr. SIMON. If my colleague will yield very briefly, I concur; you can find studies on both sides, but I think the ultimate result of any sound study is that there is no measurable impact on employment. I would add, if I may, a word for an amendment I am going to be offering a little later. The same is true for Puerto Rico. When the minimum wage was put in for Puerto Rico against the advice of a great many people, actually employment in Puerto Rico went up instead of down.

Mr. KENNEDY. I look forward to what will be, I am sure, a joyous and beneficial exchange.

Mr. SIMON. I am sure I will be able to convince the Senator from Massachusetts that Puerto Rico ought to be included.

Mr. KENNEDY. I will be persuaded and hope the Senator will have a similarly open mind.

Mr. President, I will take a few moments to go through this because I do think, as the Senate is focusing on this issue, these points need to be understood.

1949 AMENDMENTS

Congress raised the minimum wage from 40 cents to 75 cents an hour in 1949, an 87.5-percent increase. During the deliberation of the amendments, business organizations consistently warned of significant increases in unemployment and inflation as a result of the legislation.

Yet overall unemployement decreased from 5.9 percent in 1949 to 5.3 percent in 1950, youth unemployment fell from 13.4 to 12.2 percent, and total employment rose more than the prior year when there was no increase in the wage.

1955 AMENDMENTS

Congress raised the wage to $1 an hour, a 33-percent increase. Again Congress heard stern predictions from business groups of the certain unemployment and inflation which would follow as a consequence of the increase. The U.S. Chamber of Commerce warned in testimony to the

committee: "Low paid workers who are covered by the law will have been barred from jobs by Members of Congress."

Yet overall unemployment fell from 4.4 to 4.1 percent, youth unemployment slightly increased from 11 to 11.1 percent, and total employment increased more in 1956 than in the prior 2 years in which there had been no increase.

1961 AMENDMENTS

Congress increased the minimum wage to $1.15, and to $1.25 in 1963, and expanded coverage to retail and service establishments. Again, during consideration of the legislation, business opponents predicted significant impact on unemployment and inflation. In testimony before this committee, the U.S. Chamber of Commerce stated: "Many retail and service employers have already predicted layoffs * * * if brought under coverage of the $1.25 law." The Chamber went on to assert: "Whatever good might result from minimum wage legislation would be far outweighed by the unemployment and inflation the legislation would provoke."

Yet retail and service employment, which had increased 1.2 percent between 1960 and 1961 when not covered by the FLSA, jumped 3.3 percent between 1961 and 1962. Overall unemployment fell from 6.7 to 5.5 percent, youth unemployment fell from 16.8 to 14.7 percent, and overall employment increased six times as much as in the prior year when there had been no increase. Inflation increased at a lower rate in the year after the increase in the minimum wage took effect than in the year prior to the increase.

1966 AMENDMENTS

Congress increased the minimum wage from $1.25 to $1.40 in 1967, to $1.60 in 1968, and expanded the coverage of the FLSA. Once again this committee received testimony from a variety of business organizations predicting significant adverse employment and inflationary impact. Yet unemployment fell from 3.8 percent in 1966 to 3.6 percent in 1968, youth unemployment fell from 12.8 to 12.7 percent for the same time period, employment increased by over 3 million workers, and labor market participation rates hit a postwar high in 1969.

The increase which took effect in 1968 raised the minimum wage to 55.4 percent of the average hourly earnings, the highest relative level of the minimum wage. Yet careful study of its impact on employment led Secretary of Labor George Shultz to report to Congress in 1970:

There was continued economic growth during the period governing the third phase of the minimum wage and maximum hours standards established by the FLSA Amendments of 1966. Total employment on nonagricultural payrolls (seasonally adjusted) rose in 28 out of 32 consecutive months between January 1967 and September 1969. In the most recent 12-month period, employment climbed 3.2 percent * * * between September 1968 and September 1969. Employment rose in all major nonagricultural industry divisions during the 12 month period between September 1968 and September 1969. In retail, services and state and local government sector—where the minimum wage had its greatest impact in 1969, since only the newly covered workers were slated for Federal minimum wage increases—employment rose substantially.

The report to Congress of Secretary of Labor Hodgson the following year confirmed Secretary Shultz's analysis:

In view of the overall economic trends, it is doubtful whether changes in the minimum had any substantial impact on wage, price, or employment trends. Of much greater significance, however, is the fact that the 15 cent boost did help two million workers recover some of the purchasing power eroded by the steady upward movement of prices which had started even before the enactment of the 1966 amendments.

1974 AMENDMENTS

Congress increased the minimum to $2 in May 1974, $2.10 in 1975, and $2.30 in 1976. In hearings before this committee prior to passage of the increase, again businesses testified to the adverse employment impact of the proposal. One witness for the American Retail Federation testified that they would be forced to implement "alternatives," including:

Obviously to reduce the number of employees. The first ones to go would have to be marginal employees we in many cases are carrying now. We would also have to suggest retirement to employees who are no longer productive but who we are currently carrying.

Yet even during the 1975 recession during which unemployment rose from 5.5 in 1974 to 7.6 percent in 1976 and youth unemployment increased from 16 to 19 percent, retail employment increased by 655,000 jobs, a 5.2-percent increase.

1977 AMENDMENTS

Congress increased the minimum wage in four steps, to $2.65 in 1978, $2.90 in 1979, $3.10 in 1980, and to the the current $3.35 in 1981. This committee again received testimony from business organizations predicting significant job loss stemming from passage of the amendments. The U.S. Chamber of Commerce testified that the proposed minimum wage increase would result in about 2 million lost jobs. They offered as evidence a study providing a State-by-State breakdown of the lost jobs totaling 1,977,000 by 1980, if the minimum wage reached $3.15 an hour—the bill which passed reached $3.10 by 1980. The chamber witness stated:

Rather than help a person who is now making $2.30 by raising the minimum wage to $2.65 or $3.00, you are hurting him because you put him out of work. So the minimum wage may be $3.00, but his wage is zero unless he can collect welfare, because his job is eliminated.

The chamber testimony also calculated a first year job loss of 400,000, 387,000 of which would be teenage jobs. Minority teenage unemployment would increase almost 6 percent to 45 percent with a $2.65 minimum the first year.

One retailer testified that 5,800 of 29,000 convenience stores would have to close if the minimum wage increase became law. He concluded:

The minimum wage increases contemplated by S. 1871 could sound the death knell for a large number of convenience food stores. It could force mass layoffs and could cause some companies to completely go out of business.

Yet the following table demonstrates what the actual employment impact was:

Year	Impact minimum wage	Percent increase	Unemployment percent	Youth unemployment percent	Total employment (thousands) [1]
1977	$2.30	0	7.1	17.8	88,734
1978	2.65	15.0	6.1	16.4	92,661
1979	2.90	9.4	5.8	16.1	95,477
1980	3.10	6.9	7.1	17.8	95,938
1981	3.35	8.1	7.6	19.6	97,030
1982	3.35	0	9.7	23.2	96,125

[1] Civilian, nonagricultural industries.

As the table indicates, total employment increased 8,296,000 1977-81. The only decline in employment occurred in 1982, a year in which there was no increase in the minimum wage. Employment increased 3,313,000 in 1977, also a year in which there was no increase, and it increased 3,927,000 in 1978, the year a 15 percent increase of the minimum wage went into effect. Teen employment increased 382,000 in 1978, as compared to an increase of 352,000 in 1977 when there was no increase in the minimum wage. Minority teen unemployment declined 1.8 percent in 1978 when the minimum wage reached $2.65, instead of the almost 6 percent increase projected by the U.S. Chamber of Commerce testimony in 1977.

Contrary to the testimony projecting 5,800 of the 29,000 convenience stores closing if the minimum wage were increased, the number of convenience stores increased by 4,100 between 1977 and 1978, as compared to an increase of 2,000 between 1976 and 1977, when there was no increase in the minimum wage.

Retail employment also increased by 1,381,000 in 1977-81. The only decline in retail employment was in 1982, a year in which there was no increase in the minimum wage. Retail employment increased in 1977 by 599,000, when there was no increase in the minimum wage, and by 765,000 in 1978, the year a 15-percent increase was in effect.

The 1977 amendments also created the Miniumum Wage Study Commission to examine the impact of the

FLSA. In the May 24, 1981, letter to the President and Congress accompanying the Commission's recommendations, the Commission Chairman termed the research "the most exhaustive inquiry ever undertaken into the issues surrounding the act since its inception."

The Chairman of the Minimum Wage Study Commission concluded in the seven volume report:

The evidence suggests that recent changes in the Fair Labor Standards Act have had relatively little impact on national unemployment levels and that the achievement of substantial decreases in unemployment (if they are achievable at all through amendment of the Fair Labor Standards Act) could be obtained only at the cost of a very large subsidy of employers in the fast food, retail and other low-wage industries by low-wage workers, or tax payers, or both * * *.

The purpose of the Fair Labor Standards Act was and is to establish a floor below which wages will not fall, a floor which is adequate to support life and a measure of human dignity. It is a laudable legislative effort to ensure a just wage in return for a day's labor * * *.

That the minimum wage has not brought us to the Earthly Paradise may be a disappointment, but it should not be a surprise. That it has provided a working floor below which wages would have gone in its absence and have not gone because of it, suggests that it has done what it was intended to do. May that be said of each of us.

1987 TESTIMONY

The committee again received testimony and accompanying studies projecting significant adverse employment impact under S. 837. One study submitted by the U.S. Chamber of Commerce calculated 1.9 million jobs would be lost by 1995 under S. 837 as originally introduced. This study concluded that through the first 3 years ($4.65) there would be a 550,000 decline in employment, 113,000 to 339,300 of which would be teen jobs, and a 0.4 percent increase in the unemployment rate.

Another chamber of commerce study received by the Labor Committee concluded that through the same 3 years of the bill ($4.65) total job loss would exceed 750,00, 420,000 of which would be teen jobs.

Another witness presented the conclusions of a study commissioned by the Retail Industry Task Force, which calculated that at a minimum wage of $4.65 "882,000 people would lose their jobs, 364,000 from the retail industry."

CONCLUSION

These projections of job loss are consistent with the previous projections by business organizations and economists in opposition to previous amendments to the Fair Labor Standards Act. Yet it is apparent from the employment and unemployment data following previous adjustment to the FLSA rate that the adverse employment consequences projected by these and other economic studies have never come to pass.

It is not surprising that the historic data on employment and unemployment do not support conclusions by economists plugging data into a model or a formula. Wage markets do not behave the same as commodity markets vis-a-vis the economists' stock in trade, supply, and demand curves. As Dr. Adams testified before the Labor Committee:

We visualize the labor market as one that is highly fragmented, not like the market for wheat and corn and potatoes, but rather, it is an individual relationship between workers with very specific qualifications and their employer. And in such a fragmented labor market, certain workers fall behind, lack bargaining power, lack information and are unable to achieve a market wage.

Similarly, it would not surprise the original drafters of the FLSA that wage markets behave differently than commodities markets. The fundamental premise of those who authored the FLSA was that labor is not a commodity, and as a matter of public policy, should not be treated as such.

The differences between economic and business projections of adverse consequences and the subsequent actual employment data may have been best explained by Dr. Walter Galenson, in his testimony before this committee in 1977:

Economists are prone to make strong policy statements on the minimum wage, and one would have supposed that by this time, they would have had a firm supporting factual foundation. This is unfortunately not the case. * * * One of the difficulties with most of these studies is that they are based upon macroeconomic data, and that heroic assumptions are necessary in order to distill out the effects of economic developments that are occurring simultaneously. * * * The problem with arguments on both sides of the issue is that the major forces that determine the level of employment swamp any and probably minor effects that might be attributed solely to a change in the minimum.

Dr. Galenson's observations were supported in the hearings this Congress by Dr. Gerard Adams, who testified:

I conclude by saying that our econometric estimates suggest that at worst, adjustment of the minimum wage to $4.65 an hour and indexing thereafter will have small effects on the GNP and employment and only moderate effects, up to .2% annually, on inflation. These are tiny imperceptable differences, and they will be overwhelmed by small changes in any number of more important variables that affect our economy. * * *

A ten cent increase in the price of gasoline will give you two-tenths of one percent on the inflation rate if you carry it through the model.

A $10 billion change or reduction in government spending—$10 billion is not a large number—would give you approximately the same impact on unemployment as we get here.

Mr. President, over the course of this debate when we hear about increasing unemployment, loss of jobs, I think it is relevant to go back over what the history has been. Has history sustained the arguments of those who have been opposed to the increases with a loss of jobs, with a loss of opportunity in the home, with a stifling of the economy, or has it been the opposite way? Look at the history, Mr. President. Every indication from those past increases sustains the view that those of us who support an increase have maintained.

I see on the floor my good friend from Utah. Last evening he made reference to 7 inches of editorials that opposed the increase in the minimum wage. I told my good friend from Utah that I was going to have a good evening of reading last night. I made some reference to that as being the power of the chamber of commerce to which the Senator from Utah took some umbrage, and said it was really a reflection of the free press. If I do not state it correctly, I hope I will be corrected. I am sure I will.

So I opened up the one column here, and I looked under my State, Massachusetts. I read the editorials of the Boston Herald, which sustained the position of the Senator from Utah. That is not controlled—although some people think it might be, but I do not believe it is controlled by the chamber of commerce. I turned to the second page. I see the Pittsburgh Sentinel Enterprise guest editorial. So I thought well, that might be interesting. Mr. Richard Lesher is the president of the chamber of commerce. That was up in Pittsburgh.

Then we went to the New American Belmont that had opposition. Then I turned to the third page. I see the Baltimore Sun in my Massachusetts section, but I looked over in side and they indicated that same editorial was in The Holyoke Transcript. Then I went over to the next page, and it has a Waterbury, CT, Republican. That article was written by Robert Martin, who is the director of the chamber. The similar article, identical, is in another Massachusetts paper by Mr. Martin. That is in the Barnstable Patriot. So we are now batting 85 percent with the chamber. Then I go to the next page to the Ansonia, CT, Sentinel. Guess who wrote that article? It was Robert Martin again, of the chamber. That same editorial appeared in the North Adams Transcript.

So the chamber in terms of the Massachusetts press, we are batting about 75 percent. I wanted to draw that to the attention of my good friend and colleague. I am delighted to see him back here on the floor, and look forward to hearing his arguments in support of his amendment.

The PRESIDING OFFICER. Does the Senator from Massachusetts wish to have some items in the RECORD?

Mr. KENNEDY. Mr. President, I think we can reference those matters. I will not bother putting them in the RECORD. Thank you.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I call the Senator's attention to the editorial on the front of this, just one of the volumes of editorials against the minimum wage. It is an interesting editorial not written by the chamber at all. As a matter of fact, it is written by the New York Times. It is astounding. Ten years ago I do not think the New York Times would have been against the minimum wage increases. But be that as it may, they may not be now. I have seen the New York Times change its position before, which they have a right to do.

But if you look at these editorials you will find that for the first time in history newspapers and print media all over this country are alarmed and concerned about the actual facts brought up by an overwhelming number of economist, in fact virtually every main line economist, that the minimum wage is detrimental to the very people that they claim they are trying to help. And frankly, it is very detrimental to the country.

It does not take much in the way of intelligence to understand if you push up the minimum wage everything else goes up as well. If somebody is at $3.35 an hour and you put it up to $3.75, which this bill will do next year, all of a sudden those who are making $3.75 have to go up. It just makes sense. Of course, maybe that is what the distinguished Senator from Massachusetts wants. Those at $4 or $5.50 have to go up, all the way up the tree. Who pays for all of that? Why, every consumer in America. I might add they pay for it because all of the costs of goods and services go up. Not only that, but the people who are hurt the most are really the elderly on fixed incomes, and Social Security because they have to pay even though they are limited in their income. They do not have any real way of going out and making more income.

Of course, nobody is going to give any consideration to this bill to the low-wage workers because they pay more and the very people who get this so-called wonderful benefit of an increase in the minimum wage are paying more. So the 40 cents you give them is basically taken away. But it costs everybody. It does not take any brains to figure that out. It was not even difficult for a lot of these newspapers.

It is no secret that the chamber of commerce is against increases in the minimum wage, as is virtually every business organization in the country. Is it just because they are a bunch of greedy people who want to make higher profits? I think we have to say there is nothing wrong with making profits. But I think it is also a little bit callous to accuse all business people of being greedy or even to say that all workers are poor since we know that about 14 percent really are working poor under the minimum wage today. But why increase the minimum wage for everybody when we could take care of the working poor with something like an unearned income refundable tax credit which would really work, and which would not cause an inflationary spiral.

Mr. KENNEDY. Will the Senator yield?

Mr. HATCH. If I could finish, but I will be happy to debate as time goes on.

Let me just say this: The distinguished Senator, I understand in my absence, was talking about when I worked as a janitor at BYU to put myself through college, that probably it did not take very long for me to learn that. It did not take me 3 months of a training wage to learn that job. I think he denigrates all custodians in this country.

Let me tell you something: There is a little bit of skill, if not a great deal of skill, in being a really good custodian. I happened to have worked to become a good one. I know that the distinguished Senator thinks that is where I should still be. [Laughter.]

On the other hand, I have had the experience of working for the minimum wage, which he has never had nor ever will. I know what it is like to do it, and I know what it is like to get an entrance job. I wondered whether I could get that 60-cents-an-hour job, or whatever it was at the time. I do not believe it was more than 60 cents an hour. I worried sick about it, because I was not sure there would be one for me. If I had not had that job, I could not have made it through undergraduate school.

If I had not worked pretty close to the minimum wage—I cannot remember the exact wage—as an all-night desk attendant in the girls' dormitory at the University of Pittsburgh, Elaine and our three children and I would not have made it through law school.

I understand this problem, and I understand the desire—and I think it an altruistic desire—on the part of my distinguished colleague to have everybody make a better wage. I like that myself. But the laws of economics say that if you price some of these poor people out of the marketplace, those jobs go, too, and that is unfortunate.

I saw a letter yesterday from one group touting the minimum wage and saying that we should all vote for it, saying youth employment has gone down. It sure has, under this administration, because the economic policies of this administration have been beneficial, even though they have not been perfect, and we have had 69 months of continued economic expansion since the last minimum wage was raised in the early 1980's. I think it is time for people to stop and think maybe that is why.

If we have 14 percent working poor—or, let us give the benefit of the doubt, a little bit more than 14 percent—let us attack that problem directly. I will join the Senator for an earned income tax credit refundable to those people, to bring them to a point where they can get by. I believe in that. But why do we have to push up the cost for everybody in society?

One of the fastest growing areas in small business is single proprietorships by women, and you will find that it is very difficult for them to keep up if this minimum wage goes up, or they will have less employment. They will have less service and even less quality commodities in our society.

This is a pretty important issue here. For the first time—and my point should not be lost by the distinguished Senator from Massachusetts nor by anybody else—for the first time in the history of my discussions of the minimum wage, and it has always been an uphill battle for those of us trying to point out these economic facts, newspapers all over this land have been writing editorials backing up our position. That has not happened before. True, prodded by business people in part, prodded by economists, prodded by academicians, prodded by politicians who are concerned about this issue; true, prodded by anybody who thinks about the losses that occur as we do these things.

I am sure there are editorials that the Senator can criticize in the thousands of editorials we have shown, and probably some I can criticize. The fact is that for the first time that I know, the country is starting to awaken to the fact that the minimum wage may not be the greatest panacea it has continually been painted to be over these last several years.

We have been talking about editorials and about the earned income tax credit. I understand that the distinguished Senator from Massachusetts has criticized the cost of that. I wish he would look at the cost of increasing the minimum wage across the board.

Let me take a few minutes to discuss the training wage amendment of the distinguished Senator from Massachusetts. We knew they were going to file a training wage which would be so miniscule that it would not benefit anybody, of any consequence, that it would be so limited that it really would not be much good.

A substantive training wage amendment, in my opinion, is absolutely nec-

essary if Congress wants to enact an increase in the statutory minimum wage.

The sponsors of the bill have argued that unemployment is not affected by increases in the minimum wage, and they have brought out year-to-year statistics which show that the rate of unemployment does not necessarily increase when the minimum wage is raised. But things are not always as they seem, and statistics are not always the same when you look at them through different eyes. Let us look at these statistics.

One reason the sponsors can claim little impact on employment is that jobs are being filled by higher skill and wage levels.

I will show my colleagues in a few minutes a chart on this particular issue.

Between 1983 and 1987, the United States created over 16 million new jobs. I think that is one reason why we do not hear about Reaganomics anymore. I remember what a term of derision it was in the first 2 years of the Reagan administration.

Think about it. The new administration that comes in generally inherits the budget, at least for the first year, of the prior administration. So the new administration should not be taking credit for all the good things of the prior administration. It takes about a year or a year and a half for the new administration to implement its policies.

A good illustration would be Massachusetts. When Governor Dukakis took over, there was a miracle in effect. Robert Rice, the famed liberal Democrat Harvard economist, said it would have been a miracle if Massachusetts had not had a miracle because the former Governor King had just cut all the taxes and Reagan had started an increase in military spending and, of course, Massachusetts took off. In 1986 there was a $1 billion surplus in Massachusetts, $1 billion. This year it was a $450 million deficit. After spending that $1 billion and all the increased revenues that came from that Massachusetts miracle, they wound up with a $450 million deficit. Maybe that occurred for a variety of reasons, but it bothers me.

Between 1983 and 1987 the United States created over 16 million new jobs. That is exemplified by this bar chart going up. Of these new jobs, 12 million were at wages of $10 an hour or more, 12 million of the 16 million were for high wages. Think about that. More than 3 million paid wages between $6 and $10 an hour, more than 3 million. Fifteen million of the 16 million were for more than $6 an hour. Twelve million of them were for more than $10 an hour. These were new jobs created by Reaganomics, if you will.

What about this?

Mr. KENNEDY. Mr. President, will the Senator yield on that point?

Mr. HATCH. Sure.

Mr. KENNEDY. What is the objection to raising the minimum wage? If you have all these jobs paying a good deal more, what is the threat to it? You have a certain percent of American families who are not in that. You say all of these jobs, 15 million of the 16 million are above $6 an hour. What is the objection? Why not look out for those few millions of families that are dependent upon that?

Mr. HATCH. I think the answer to that is a very clear one. You lose all or at least a good percentage of the entry level jobs that help people to get in these two categories. They are stuck here because they cannot get a job because those jobs do happen to dry up.

The reason the 16 million jobs have been created has not been because of the minimum wage. It has been because there has not been an increase in the minimum wage, in part. It has been because of Reaganomics. It has been because of an adequate economic structure and system right now, and it has been basically because we had economic prosperity for 69 straight months, part of which is because inflation has been kept down because we have not had a continually increasing minimum wage pushing up the wage floor for everyody, and the cost of goods and consumer products for everybody, and hurting everybody who is on fixed income in our society.

This particular chart is very revealing because of the 16 million new jobs created under this administration's watch, 12 million or more were $10 an hour or more. In other words, it is a myth to say that they are all minimum-wage, food service jobs. Frankly, McDonald's for example, pays more than the minimum wage. It is difficult to get people to do that type of work and keep them.

The vast majority of all jobs created over the last 7 years have been over $10 an hour—$12, maybe. Another almost 4 million have been over $6 an hour, between $6 and $10 an hour. So 16 million of the 17 million jobs created have been more than $6 an hour.

Now, this bottom figure is that jobs of $6 an hour or less have diminished. The reason that is so is because there is so much opportunity on this end because we have not saddled the Nation with fictions like the minimum wage which drive everything up while benefiting no one. It is a myth to think that if you give somebody from $3.35 to $3.75, everything else does not go up, too, or virtually everything else. And when everything else goes up including the costs of that corn at the store, that poor guy who has made that extra 40-cent jump is finding that he is spending 50 cents more for food so he or she is not getting any benefits.

They might initially receive some temporary benefit but not very much. If we raise the minimum wage, thus eliminating hundreds of thousands of jobs—and I would say more of these entry-level jobs—how do we ever expect the unskilled or the inexperienced citizens of our society to break into the labor market? The distinguished Senator from Texas made a very profound point there.

Second, if we narrow the scope of these statistics, we will see that teenagers and other inexperienced workers are the ones who are hurt by the arbitrary increases in base wages. Take a look at this next chart.

Now, this is from Labor Department data, percentage of 16- to 17-year-olds with jobs. Look at what has happened.

There were minimum wage hikes in 1979, 1980, and 1981. Note the sinking line. In 1979, it started down; 1980 started down; 1981. It had bottomed in 1982. The fact is it does not start back up again until 1982. Youth in this society were seriously hurt by increases in the minimum wage.

Now, we can break this down a little more. Just look at this chart again. The labor force participation rate for young black men, particularly for those in the 16 to 17 age groups, shows that young minorities are seriously affected by minimum wage increases. The periodic increases in the minimum wage, together with the 1961 and 1974 Fair Labor Standards Act Amendments which increased not only the rates but the coverage, resulted in diminished labor force activity by young blacks, one of the groups that they claim they are targeting with this type of legislation.

I ask unanimous consent to include in the RECORD a table taken from an article written by Dr. Walter Williams, professor of economics at George Mason University, and statistics from the Department of Labor.

There being no objection, the chart was ordered to be printed in the RECORD, as follows:

MALE CIVILIAN LABOR FORCE PARTICIPATION RATIO BY RACE, AGE

Minimum wage and year	Black/white males			
	16 to 17	18 to 19	20 to 24	16 plus
1954	0.99	1.11	1.05	1.00
1955	1.00	1.01	1.05	1.00
$1/per hour:				
1956	.96	1.06	1.01	.99
1957	.95	1.01	1.03	.99
1958	.96	1.03	1.02	1.00
1959	.92	1.02	1.04	1.00
1960	.99	1.03	1.03	1.00
$1.15/per hour:				
1961	.96	1.06	1.02	.99
1962	.93	1.04	1.03	.98
$1.25/per hour:				
1963	.87	1.02	1.04	.99
1965	.88	1.01	1.05	.99
1966	.87	.97	1.06	.98
$1.40/per hour: 1967	.86	.95	1.04	.97
$1.60/per hour:				
1968	.79	.96	1.03	.97
1969	.77	.95	1.02	.96
1970	.71	.92	1.00	.96
1971	.65	.87	.98	.94

MALE CIVILIAN LABOR FORCE PARTICIPATION RATIO BY RACE, AGE—Continued

Minimum wage and year	Black/white males			
	16 to 17	18 to 19	20 to 24	16 plus
1972	.68	.85	.97	.93
1973	.63	.85	.95	.93
$2.00/per hour: 1974	.65	.85	.95	.92
$2.10/per hour: 1975	.57	.79	.92	.91
$2.30/per hour: 1976	.57	.77	.91	.90
1977	.56	.77	.91	.89
$2.65 per hour: 1978	.57	.79	.90	.90
$2.90 per hour: 1979	.55	.77	.92	.90
$3.10 per hour: 1980	.57	.76	.91	.89
$3.35 per hour: 1981	.56	.74	.91	.89
1982	.49	.78	.91	.90
1983	.52	.77	.92	.91
1984	.57	.79	.91	.91
1985	.61	.84	.91	.91
1986	.61	.82	.91	.92
1987	.64	.81	.89	.92

Mr. HATCH. These findings were corroborated by Prof. Finis Welch of UCLA who testified that the adverse impact of a minimum wage increase would fall disproportionately on black teenagers. He pointed that today a black teenager was only half as likely as a white to be employed despite overall gains in minority employment during the last 6 years.

And, Mr. President, we will be sadly mistaken if we think that these teenagers will automatically get jobs when they turn older. I am reminded of the testimony presented to the Labor and Human Resources Committee back in 1985 when we were considering another proposal for a youth opportunity wage. Mayor Marion Barry, then president of the National Conference of Black Mayors, stated his dismay over the joblessness of many young people. Let me quote from his testimony.

* * * if we are not careful here, we are producing a generation of young people who have never held a job. And I think that is a dangerous situation for us to be in, where you have people at 23, 24, and 25 years of age who have never held a job.

During the same hearing, Mr. Angel Lopez, then national chairman of SER-Jobs for Progress, a national organization dedicated to expanding opportunities for Hispanics, commented on his own experience:

I come from a poor family, my parents were migrant farmworkers. We barely made enough money to live on. In the summer months, I would help with the family income by working in the fields at considerably less than the minimum wage of the time. I would venture to say that the poor in our country are no different today than they were when I was growing up. Given the option of no job versus a job that paid less than the minimum wage, there is no question in my mind as to what I would have done. I am equally certain that if my first employer had been required to pay the prevailing minimum wage, I would not have been employed.

The National Conference of Black Mayors, SER, and other national organizations which endorsed the President's training wage proposal in the last Congress, were not against the minimum wage. Many of these same groups may be supporting S. 837 today. But they also recognized the impact the statutory wage floor has on the unskilled and the inexperienced. Obviously, a higher minimum wage means a higher hurdle for them to jump over. That is what it means. Nobody can refute that.

We simply cannot pass a minimum wage increase without taking the tremendous loss of entry-level jobs into account. But the Federal Government cannot afford the billions of dollars it would take to provide such jobs directly. A tax credit approach has some merit, but it is costly. But I would be for that because we could then help those who really do need the help who are of the working poor.

And, as we have had demonstrated with the Targeted Jobs Tax Credit—a program I have traditionally supported—a tax approach would serve as an incentive only to those businesses which have a tax liability, excluding many small businesses.

Senator KENNEDY's amendment proposes a small expansion of the student learner wage already provided in the Fair Labor Standards Act to allow 12 full-time students instead of 6 to be hired under the certificate. This student learner wage has always been insufficient for three main reasons: First, many employers are turned off by the paperwork and restrictions involved; it is a bureaucratic mess, a bureaucratic nightmare, and typical of what is offered generally in the Congress; second, even large employers are limited to the specified number of students. In this case it would go from 6 to 12. That is ridiculous and employers are employing thousands of people. It really does not help anybody. The workers, in addition to that—this is most important—three, perhaps the most important point of all, the workers must be full-time students. There is no opportunity for dropouts or recent graduates who are unemployed and want a job.

So, this proposal by the Senator which is the pending amendment is a sham. It is a sham to say that they are for a training wage when they in fact really are not. It really does not apply and it will be used for people who really do not need the help, where a real training wage will help those who do need the help.

The amendment I propose will provide substantive, meaningful assistance to those who need a boost getting into the labor force. My amendment, however, is modest—especially when compared to the proposal endorsed by the National Conference of Black Mayors, SER, the Boys Clubs of America, and other civic and business groups.

The amendment I have introduced would permit an employer to pay 80 percent of the statutory minimum wage—but no less than $3.35 an hour—for 90 days to individuals who have no previous employment with the employer.

So, it opens the door to them. That is all it does. You give up 3 months, you open the door to them, then they have to be paid the minimum wage or better afterward. Once that door is open they will generally make more than the minimum wage.

The old proposal was a 75-percent differential for 5 months during the summer. If we are going to pass a minimum wage increase at all, we ought to at least try to mitigate the negative impact it is guaranteed to have on those who want to work but have no skills, no experience, and no references.

This amendment is not a new idea, and I am sad to say it is not my idea. I wish I had thought of it. I think the idea may have originated with Senator Javits or Senator Schweiker during the 1977 FLSA amendments. But, whoever it came up with it was absolutely right to suggest that this kind of incentive to create training opportunities was needed.

We need entry-level jobs which offer the individuals the opportunity to acquire skills, and work experience, and the training wage seems to me is the best way. But the training wage amendment of the distinguished Senator from Massachusetts is nothing more than a sham, a mock training wage, something that is basically bureaucratically ensnarled. It is going to be very difficult to have any meaning whatsoever.

Let me give you a little more detailed description of it. It applies only to full-time students. The full-time student program allows employers to hire full-time students currently, under present law, with 85 percent of the minimum wage with some limitations. During fiscal year 1987, 12,391 establishments were authorized to employ an estimated 108,000 students at the 85-percent level.

It must be noted that "authorized" does not necessarily mean actual use of this exemption.

The peak utilization year for this exemption was 1978 when almost 32,000 employers were authorized to hire an estimated 515,000 students. This exemption applies only to full-time students that can be employed only on a part-time basis, and not in excess of 20 years in any workweek except during vacation periods. Employment has to be in retail or service establishments.

So it is limited to that—agriculture or institutions of higher education. Those are the ones—retail or service establishments, agriculture or institutions of higher education. The number of full-time students that can be employed by an employer at a training wage is limited to six per day under present law. All the Kennedy amend-

ment would do is expand that to 12 per day per certificate. Basically, a very modest, meaningless expansion.

Mr. KENNEDY. Mr. President, will the Senator yield on that point?

Mr. HATCH. Let me make the last two points.

Every year employers must apply and receive Department of Labor approval, every year. All of those 32,000 employers at the hike—or was it a little bit higher than that?—would have to apply every year to get Department of Labor approval prior to using the program.

I have to admit that the Department of Labor approval is generally automatic unless an employer has violated the restrictions on the number of students in a previous year.

So Senator KENNEDY wants to put in a provision that would allow employers to get temporary authority to do this, but they have to move to 12 per certificate. It is a bureaucratic way of doing things and is not really very effective.

The fact is, if you look at it, employers are turned off by the paper work burden and the restrictions involved, the constant seeking of Government help. Even large employers who might employ a lot more people who never worked before, would be limited to only 12 per certificate, 6 more than current law allows.

Perhaps more important, the workers have to be full-time students. So the purpose of the training wage is not to help full-time students. These are people ostensibly who have the ability to get jobs anyway, and most of them can get the minimum wage. The purpose of the training wage is to open the door to help those who really have nothing, who are underprivileged, who are undereducated, who are underserved, who have no skills—to get the door open.

A number of years ago, I had a young black kid come to me, and he said: "Senator, I'm willing to work for free if somebody will just give me a job. I'll work for free, because I know that if I can get a job and they will take the time to train me, it won't take me long to prove my worth, and I'll make more than the minimum wage."

That kid, with that attitude, I am sure, went on to become a success anyway. But what about the kids who do not have that? He just wanted a break. He just wanted an opportunity. He just wanted the door opened. I have had countless stories like that since.

Small businessmen cannot afford to do it if you force them out of the marketplace. They cannot afford to train people, and they will not do it. You can hardly blame them.

If you look at the Kennedy proposal, it is restricted to 12 full-time students. I will grant that allowing 12 students to participate is better than 6, but what do we tell students who only attend school part-time? Do we say: "You're out; you don't have a chance to get a job"? What do we tell the dropout who is trying to get a job?

This amendment provides nothing for people who are among the most difficult in this society, and there are 2.4 million people like this. They do not have a chance because this training wage does not embrace them, does not help them.

No. 2, the Kennedy proposal requires a certification process many employers would rather not be bothered with.

My amendment is simple: Any new hire may be paid 80 percent of the going minimum wage for 90 days, and that is all. Employers do not need to fill out applications, and the Department of Labor does not need to review them.

No. 3, the Kennedy amendment is limited to service and retail establishments, for the most part. That restriction alone eliminates potential jobs in millions of American businesses. That means any manufacturing company cannot employ students. That means the Ford Motor Co. could not use this program to provide jobs for students in Detroit.

No. 4, it limits students' hours to one-tenth of the total hours of the firm. Obviously, this implies additional bookkeeping by the employer; but, more important, it restricts the students.

If a small graphic arts firm in Ogden, UT, has two full-time employees working 40-hour weeks, that means a student couldn't work more than 8 hours a week unless the Secretary authorized more hours in the certificate. If this same company employed one student helper for each of its full-time employees, that means each student could only work 4 hours, unless the Secretary authorizes more hours. It is ridiculous, but that is the way it reads. It is an eyewash amendment that people can vote for and say they voted for a training wage, when it does not do much more than we have today, and what we have today does not do very much, and it will do less as the bureaucratic ensnarlments continue.

I think that if we examine the differences between the training wage amendment of my colleague from Massachusetts and the one we filed, the underlying amendment, ours, will work; it will help young people all over this country; and, frankly, it will be something that will be a tremendous benefit to the economy and the country, including the employers, and especially the small business employers who want to do something in this area.

So I hope all our colleagues will vote against the Kennedy amendment and vote for the underlying amendment, and I think we will be doing a favor for these young people.

(Mr. WIRTH assumed the chair.)

Mr. FORD. Mr. President, will the Senator from Utah yield me 15 seconds to answer that?

Mr. HATCH. I am glad to.

Mr. FORD. In the words of the distinguished Senator from Arkansas, Mr. BUMPERS, if you have allowed us to write $200 billion of cold checks every year, you would have 69 months of prosperity.

Mr. HATCH. You are the one, along with all the rest of us in the Congress, who permitted that to occur.

Mr. FORD. I have not voted for an increase in the debt, and if you will go look at my record, you will find that.

Mr. HATCH. Neither have I.

Mr. FORD. Probably those are the only two times in Congress we voted the same way.

Mr. HATCH. I am not speaking about the Senator from Kentucky directly. What I am saying is that the President can propose budgets, the Congress disposes of them.

The Congress has been controlled, at least the House of Representatives, where all money bills originate and have to originate under the Constitution, has been controlled by one party for 53 of the last 56 years.

Mr. FORD addressed the Chair.

Mr. HATCH. If I could finish, and I will be happy to yield, the fact of the matter is that I think there is no President who can turn this around solely by himself or herself. We have to have a better Congress. Now we have to get better Republicans and better Democrats to stand up and do what needs to be done.

But to blame this administration, which has created 69 months of economic prosperity for the spending practices of Congress, I think is a little bit of an oversimplification.

Mr. FORD. Will the Senator yield for a question?

Mr. HATCH. I am glad to again yield.

Mr. FORD. It is the Senator's party that controlled the Senate for 6 of the 8 years when all of the deficit was going down, and name one budget that the President of the Senator's party that he is giving full credit to, and I think he is a fine gentleman, but he has never submitted a balanced budget to this Congress in 8 years.

Now, when you begin to talk about all of these things and how much this administration has done to reduce the debt we talk about the third largest line item in the Federal budget which is interest on the debt that is now $3 trillion. So the 200 billion dollars' worth of cold checks every year is that something you can brag about? But I think on October 9 when we had Black Monday and this administration decided that it was time they started working with Congress they sent Howard Baker and Jim Baker to the Hill to

confer with us. In 3 weeks we had a budget; in 3 weeks we passed it, the first time in this administration's history of 8 years that they sent them up here, and we set then the cap for the next year which gives us emphasis to a 2-year budget which the administration has approved.

Finally, in the closing days, we are beginning to see something happen.

But stand here with all of these visual aids, all of these charts that somebody is trying to say we had 69 months of continuous prosperity, when we have gone $2 trillion deeper in debt and those people down on the lower end of the rung keep getting pushed down and pushed down and the Senator stands up there with his blue charts and tries to tell us everything is good.

Now, I do not know where the Senator has been all these last few years, but I have been down with my people trying to figure out how I could help them, and one of the most important things is education, and this bill keeps kids in school. I have not found anybody that is opposed to trying to help these students, and by helping the students and giving them a livable wage and encourage them to stay in school. What is wrong with that?

Mr. HATCH. I do not know where the Senator has been, but I have been——

Mr. FORD. I have been right here.

Mr. HATCH. Let me finish.

Mr. FORD. All right.

Mr. HATCH. I have been on the Senate Labor and Human Resources Committee working on every education bill that has come through here that has kept those kinds in school, too, and has also increased a lot of the spending which I voted for in that regard.

But let me tell the Senator something. This administration passed the Gramm-Rudman-Hollings bill without which we would not even be as good off as we are.

Mr. FORD. I thought that originated here, not down on Pennsylvania Avenue.

Mr. HATCH. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. Then I ask I be allowed to express myself since I have the floor.

It does not negate the chart.

The chart shows, under this administration 16 million jobs have been created. Twelve million of them have been created at $10 an hour or more, which I know that many people in Kentucky, the State of the distinguished Senator from Kentucky, would consider a pretty reasonable wage. We would all like to make more, but nevertheless it is a reasonable wage in this society today.

Another three, better than three, almost 4 million have been created at over $6 an hour. There is no use kidding about it. That is what this chart shows.

Our economy actually lost 4 million jobs paying less than $4 per hour, which many economists have said may have a correlation to the fact that the minimum wage has not been increasing since 1981.

Now, all I can say is this: I do not know that anybody has all the facts or all the answers on these problems, but that is pretty important stuff to not ignore.

I also have to say that with regard to the minimum wage, how can anybody deny that it is an inflationary push? I hate to say this. I believe that the distinguished Senator from Kentucky, like myself and many others, did not like 21.5 percent interest rates in the late seventies and early eighties. I did not like it. I know he did not like it. I know he did not like double-digit inflation. If I recall correctly, the distinguished Senator spoke out against that. I spoke out against it.

We have basically cured both of those problems. Now the distinguished Senator would choose to blame that on the high deficits and say that the President is responsible for all those deficits? Come on. Let us be fair.

I think he is responsible for some. I think he could have put tougher budgets up here. The fact is he knew that they would never pass this Congress or any Congress, and the reason they would not is because of the makeup of Congress and especially the House of Representatives, where all money bills have to originate under the Constitution.

Mr. FORD. Mr. President, will the Senator allow me just 1 minute and then I will stop interrupting?

Mr. HATCH. Sure.

Mr. FORD. But it indicates to me what the Senator is saying is that he thinks he should have sent a balanced budget up here, but he knew it would not go. What is wrong in doing what is right? If he had sent a balanced budget up here, and that was the issue in the campaign, we would be out of debt in 1983 and now it is 1989 and we are still going deeper and deeper in debt. What is right is right and what is wrong is wrong.

If he wanted to send a balanced budget up here he could very well have done it.

I do not see my educational people out in my State and I doubt in the Senator's that are receiving a lot more money in education. The problem today is education and the problem today is because we are not being an honest partner with our States in trying to improve education for our children.

Mr. HATCH. Let me say this: again, the Senator may not be seeing more money but if he is not he is not looking because the good Congress in its infinite wisdom has increased the cost of Federal aid to education almost 40 percent in the last 7 years and there is no use kidding about it. A 40-percent upgrade in education has been very costly, but I have supported it because I think it is that important in our society. In most respects, but I have also tried to keep down extra spending programs which were not efficient and were not good educational programs.

Mr. BOSCHWITZ. Mr. President, will the Senator from Utah yield for a comment?

Mr. HATCH. I will be delighted to yield.

Mr. BOSCHWITZ. A comment of a couple minutes on this subject of the budget?

Mr. HATCH. Yes, I am glad to yield.

Mr. BOSCHWITZ. I would say that my recollection on the budget is somewhat different than the Senator from Kentucky.

The President has indeed sent budgets up here that over a period of years would be in balance. Whenever the President sends up the tough budgets, they are declared dead on arrival by the people on the other side of the aisle and, indeed, from some on this side of the aisle, as well.

Certainly, no one would maintain that the budget can be balanced in a single year, and I do not think the President has ever maintained that. However, he has sent budgets up here that, over a period of years, would indeed knock out the deficit. And I have supported those kinds of efforts. Eventually, they were incorporated, to a large degree, in the Gramm-Rudman approach, which has shown some fiscal discipline.

Now, the distinguished Senator from Tennessee says that the events of October 1987 changed something in that.

Mr. FORD. Mr. President, I prefer to be called the Senator from Kentucky and not Tennessee.

Mr. BOSCHWITZ. Mr. President, regular order, please.

The PRESIDING OFFICER. Regular order is that the Senator from Utah has the floor.

Mr. BOSCHWITZ. Mr. President, the President has indeed sent up budgets, as I have indicated, that would have been balanced over a period of years.

The Senator from Kentucky said that, finally, after the events of October 1987, after the market crash, the administration came up here for the first time. Well, I have talked to members of the administration any number of times here on the Hill about the budget in both bipartisan and partisan meetings.

It is interesting to note that in the fiscal year that ended on September 30, 1987, we made remarkable progress

in balancing the budget. In 1986, the deficit was $221 billion. In fiscal year 1987, which ended before the Black Monday of the stock market, the budget deficit went down by a third. The budget deficit in 1987 was $148 billion, down by $73 billion in the period of 1 year. That is pretty good progress, Mr. President.

The reason that it occurred is that we disciplined spending outlays that year. Outlays in the Federal budget in fiscal year 1987 went up by just 1.4 percent, while revenues went up by nearly 8 percent. If you can discipline the outlays in that way, you indeed will be able to come to a balance rather quickly. And I think that is what the President has been saying over a period of years, albeit unsuccessfully.

Frankly, I think that the American public may have an inaccurate view of the President's role in the budget. The President, indeed, presents the budget in January of each year. In January of each year, he sends that budget to the Congress.

But the budget is unlike a bill that we pass. The budget is not something that the President signs. The budget is not something that the President can veto. The result is that after the President sends it up here to the Hill, and after it is declared dead on arrival, as it so often is because Members of Congress do not like the way the budget might attack a particular program that they have an interest in, the President's participation largely ends.

The Congress then passes the budget. The budget is enacted without a signature by the President. The President cannot say, "Well, I don't like that budget; I am going to veto it," as he can a bill. As a result, the part that he plays in the budget is often overstated.

I agree with the Senator from Utah that much of the problem lies here in the Senate and the House of Representatives. Indeed, we controlled the Senate, the Republicans, for 6 of the 8 years of this Presidency, and we bear part of the blame. I have tried on many occasions to slow the growth of spending in the Federal Government, without success. Very frankly, that lack of success has been because of votes, yes, on our side, but mostly from the other side of the aisle.

This is certainly not a clear-cut matter where fingers can be pointed. But it should be understood that the President's role in the process of creating the budget is not as great as is sometimes written about in the press. And while these deficits are allegedly the deficits of this President, I would contest that viewpoint. As I have said, the President's role has largely ended after he submits the budget; the budget, unlike a bill, is not signed. As a result, the budget cannot be vetoed.

To blame the budget or the deficits on the President really is incorrect. We pass those bills and spend the money. Some of the blame must rest on this side of the aisle, some on the other side of the aisle, and some on the other House, as the Senator has indicated.

Mr. HATCH. Let me just thank the distinguished Senator for his cogent remarks. He is a member of the Budget Committee and he does understand this, I think, better than most Members of Congress.

There is no question about it. I personally would have preferred the President submit balanced budgets up here, but he would have been laughed right out of this town, not only by the editorial writers and everybody in the media, but by our friends on the other side, and even some of us.

Mr. BOSCHWITZ. I know that the Senator was engaged in conversation. I pointed out that, whenever the President sends up a tough budget here—and he has sent up budgets that, over a period of years, came to a balance—but whenever he sends a tough budget up here, it is declared dead on arrival. Because some Members of Congress on both sides of the aisle, not liking some of the provisions where some of their favorite programs were perhaps reduced or in some way affected—decided the budget was dead on arrival. And then we blame the President. I would agree with the Senator from Utah that we cannot do that.

Mr. HATCH. I am going to ask my distinguished colleague from Minnesota a question or two.

But let me just say this. I think the best way that I know of to see whether or not Members of Congress are for balanced budgets is to look how they voted in 1982 and, I believe, in 1986, when we brought the balanced budget constitutional amendment to the floor.

In 1982, there were 69 votes for the balanced budget amendment in the Senate. I think the people ought to check that and see just how sincere these people are who are talking about balancing the budget. Because they had the one chance in their lives to see that the President and the Congress and everybody else had to balance the budget. Thirty-one of them voted against that amendment. I think you will find an amazing correlation: Every one of those, I believe without exception, except those who are no longer here, would be for the minimum wage, because they love these programs. They can pretend that they are helping the weak and poor when, in fact, all they are doing is basically sending inflation through the roof, along with the cost of consumer goods and everything else and hurting everybody on fixed income.

I would like to ask the distinguished Senator a question. I will talk more about the training wage in a few minutes. I would like to ask the distinguished Senator from Minnesota a question.

He heard the remarks of the distinguished Senator from Massachusetts with regard to the earned income tax credit. I know the Senator from Minnesota is very concerned about that issue and may even have an amendment on that. So I would like to ask him: Did he agree with the distinguished Senator from Massachusetts on that, or what would you have to say?

I certainly did not agree. I think he is 100 percent wrong. And it is typical. We just throw these blanket programs out and say "We are taking care of everybody," when, in fact, there is only a certain segment of people who really do need the help. And we ought to help them, but the way to do it is directly help them. And the earned income tax credit is a way.

I would like to yield the floor at this time to the Senator from Minnesota and maybe I can get the floor back later to finish my remarks on the training wage. But I think it is important that he answer his comments.

Mr. BOSCHWITZ. Mr. President, I would say to my friend from Utah, I did not hear the remarks of the Senator from Massachusetts. I just came to the floor, and I understand that he did make a series of remarks about the earned income tax credit: That he opposes it and that there was a very large cost related to such an earned income tax credit. I believe he said that the cost of it would be $6 billion. I believe the Joint Tax Committee said the cost would be $2.1 billion. The earned income tax credit is very well targeted, in Pennsylvania and Minnesota and even in Colorado, unlike the minimum wage, which is very poorly targeted. Raising the minimum wage hits very few of the poor and would not really achieve what we want to achieve by raising the minimum wage. I think the minimum wage might be raised moderately, but if it could be combined with the earned income tax credit, it would really get at the people who are most in need.

The earned income tax credit applies only to families. The earned income tax credit varies with family size. In the event a family has four children, an earned income tax credit of $2,500 could be obtained. In the event somebody works 40 hours a week, that would be the equivalent of $1.25 an hour—not bad.

The way the earned income tax credit is structured in the amendment, the credit could be added to a person's check every week, so that a person would not have to file his income tax and then receive the tax refund at a later date. The earned income tax credit is a refundable credit. That

means that it is refundable, even in the event that the taxpayer does not have taxes to pay. A family with four children, for instance, would have so many exemptions and such a large standard deduction that they would not have taxes to pay. In that case, the earned income tax credit would be a refundable tax credit, giving a very significant increase per hour to a low-income worker.

The earned income tax credit is something that goes only to people who are below a certain income level, and it gradually phases out. At an income level of $18,000, the entirety of the earned income tax credit is phased out. It has very many positive aspects to it.

First, it is not inflationary. As I understand it, the CBO has said that the increase in the minimum wage called for in this bill would have a 0.6-percent inflation increase, and I could well understand how that would happen. Prior to coming to the U.S. Senate I was an employer, and I sat with time cards on many occasions reviewing the wages of my employees. From my experience, I know that if you raise the minimum wage by $1.20 the entire wage structure would go up.

If you have somebody who is at $4.50 and you have had to raise somebody who is at $3.60 up to $4.55, the person at $4.50 is going to have to go to $5.25, and the guy who was at $4.90 is going to have to go to about $6. The whole wage structure is moved up. With that comes inflation. I think the CBO's estimate of 0.6 is probably a conservative estimate, very frankly.

The impact of that 0.6 percent on the budget would be very meaningful. The cost of all Federal programs would rise. All of the entitlement programs that are indexed would automatically go up. And the cost to the Federal Government would be very, very great.

However, that is not scored, as they say here in the Senate. That is not counted as an outlay by the CBO. The OMB will not score that as an outlay either, although the inflation caused by this bill is going to cause the cost of the Government to rise.

The earned income tax credit would not cause such an increase in inflation that would hurt every American. It does not have that very unfortunate side effect. In addition, it is targeted exactly at the people we are seeking to help with the actions of the Congress here.

Mr. President, I will offer a longer statement on the earned income tax credit at a later date. It certainly does not have a cost of $6 billion, as the Senator from Massachusetts stated. The Joint Tax Committee had said it has a cost of $2 billion, and those $2 billion are all targeted exactly where they should be targeted: to poor families. It will encourage people to go back to work. It is an automatic raise for low-income workers. It is a fair and decent approach to this problem.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I rise in opposition to the bill before us. The bill before us is antigrowth, antijob, antipoor, and antiminority and if adopted will hurt America. But it will hurt most people that the proponents of the bill claim they are going to help.

First of all, Mr. President, I would like to point out this bill is an absurdity on its face. If we could pass a law and make wages what we want them to be—which the proponents of this bill, in essence claim—why are we debating a measly $4.55 an hour? I think we ought to have a million dollars an hour. We will just pass a law that says everybody that works gets $1 million an hour, we will all be rich.

The problem with it there is a quirk in arithmetic that we all learned in the third grade and that quirk is a terrible thing but unfortunately it operates in the real world, outside the U.S. Congress. And that quirk is that anything times zero is zero. A million dollars an hour times zero hours equals zero income.

Now, Mr. President, I do not think the proponents of this bill would argue that American business is not out trying to earn a profit. People hire people up to the point that the wage they are paying them is equal to the value of what they are producing for the company or business for which they are working. So if people can hire somebody at $4 an hour and they produce $4.05 worth of goods and services, they hire them. If, on the other hand, we pass a law that says it is illegal for anybody to work for $4.55 an hour or less, then a company cannot hire anybody for less and so if somebody cannot produce $4.55 per hour worth of goods and services, this bill says they will not work in the United States of America. In essence, what this bill does, Mr. President, is, in the most cruel form it cuts the bottom rung off the economic ladder.

I doubt there are many Members of this body, though I suspect there are a few, who have not worked at the minimum wage. I have worked at the minimum wage and acquired great skills in doing so. I once worked for a peanut company sanding display cases that went into filling stations. And I learned something very important in that job and that is I did not want to do that the rest of my life. It had a profound impact on me. And had the minimum wage been $4.55 I would have never learned that lesson because I would have never been employed.

Now, being an economist and a schoolteacher, I could stand up here and rattle off statistics until early morning. However, I can give you the lesson of minimum wages in an example that is more powerful than all the statistics economists have generated indicating this bill will cost America 750,000 jobs a year by 1990 and no doubt that number or something close to it, or even above it, is true.

The other day I had some florists come to see me. I was glad to see them because they brought me flowers and I gave them out to all the people in the office. And one of them said to me: "Senator, what do you think about this minimum wage?" And I of course told him that I would be for a million dollars an hour if we could make people hire people and pay the wage.

So he said: "Here is my experience with minimum wage," and I want to share this with my colleagues. He said: "I normally have about three or four people who work for me at the minimum wage. They do not work for me for long. They come in, they learn a few skills, somebody comes along and hires them or they move up in my organization."

He said: "Six years ago, I hired a fellow at the minimum wage. He moved up in my little shop and he learned all of my skills and he learned how to do the books of the company. Then he quit and went across the street and opened up his own flower shop. Now he has 10 people working for him at the minimum wage."

He basically said if the minimum wage had been $4.55 an hour, that he probably would be a rich man today because the fellow who was in business across the street competing business away from him would be on welfare somewhere rather than hiring twice as many people as he would hire.

The truth is, Mr. President, that minimum wage jobs are weigh stations on the way to opportunity and prosperity in America. On-the-job training is the most powerful training vehicle we have in America. The training programs run by the Federal Government are irrelevant, for all practical purposes, in the operating of the American economy. As proud as we are of the ones we pass, the truth is the American free enterprise system is the greatest training system in history.

America will still survive, America will still prosper if we pass this bill, but there are literally hundreds of thousands, maybe a few million people who will never get their foot on the first rung of the ladder. We will end up squandering their talents because they will not get that job at that flower shop; they will not learn those skills. They will not go out and open their own business and make a lot of money and probably will not vote for me. But America will lose from it. We will squander the talents of hundreds of thousands of people because of this law.

Mr. President, the history of minimum wage law has had nothing whatsoever to do with poor people. Minimum wage laws have always hurt the poor. They have always hurt minorities. They eliminate the ultimate justice of America. The ultimate justice in America is: I walk into a person's place of business and I say: "Now, look, I know you listen to me talk and you think I am ignorant, you think I can't do something, but I can, and I will work for less. You hire me, I will work for less." What this bill says, is that is illegal.

Mr. President, I long for the day when every American will make $10 an hour or $20 an hour, but that day is not going to come by passing laws relating to minimum wage. That day is going to come by controlling Government spending, lowering interest rates, cutting taxes, and providing incentive for investment. It is a great paradox that even with education, as our economy has become more complex, the American people do not understand their economy as well.

I would like to see our colleague from Massachusetts go back 150 years when there were little farms out in Massachusetts and go out on the farm and meet the little farmer and say: "Listen, I am getting ready to pass a law that is going to raise your wages out here on this 40-acre farm."

The farmer would say: "That would be a good thing. How would you do it?"

He would say: "Well, we will have the Government pass a law, and it will say you are going to get a certain amount of money for the number of hours you work out here behind this mule."

The farmer would immediately say: "Now, wait a minute. How is that law going to help me grow more corn? How is that law going to make people willing to buy more corn?" Immediately he would write off the fellow who was trying to sell this snake oil as being just another political fellow coming down the road. And you could do it in Texas, Massachusetts, or Utah.

Mr. President, today when most people do not sell what they produce, when your economy is so much more complex, people come to believe that Government has all those mystical powers, that we can pass a law and suddenly we can made wages higher. We can pass laws and make wages higher, but we cannot pass laws to make people hire people at those higher wages, and that is the fallacy of this provision.

Finally, even if all the claims that are made for this bill by the proponents were true, one would have a hard time arguing that this was a bill that was aimed at poor people. I just wrote down on my way over four points that I think are relevant to that debate.

First of all, even if noboby was laid off, denied a job or laid off, by raising the minimum wage to $4.55 an hour, the best I can figure, only 11 percent of those gains would go to people who are living in proverty. If nobody was denied a job or laid off, if people just raised wages because they did not make any difference anyway, only 11 percent of the gains would go to people in poverty.

In fact, only 2.3 percent of minumum wage earners are full-time, yearround workers in families below the Federal proverty line. In fact, 63 percent of the heads of households in poverty families in America do not work at all.

Finally, if you were going to try to get people out of poverty by raising the minimum wage, you are going to be trying a long time. In fact, if you raise the minimum wage for a bread earner for a family of four next year to $3.75 an hour, that family of four would still be $4,758 below the provety line.

Mr. President, we ought to be working to try to get people to hire more people. On-the-job training is the path to progress and prosperity in America. Anything we do that makes it harder for young, unskilled people to get on-the-job training hurts America.

How many people have served with distinction in this great body who never would have been here had they not gotten a job in the past at some low wage to either learn some skill or learn that they did not want to do something the rest of their life? How many people have gone on to become the very captains of industry who never would have had a job had they not taken a low-paying job?

What is missing here is some people look at these jobs and they say: "Those are jobs that people are stuck in all their lives." They do not see that entry-level job as being the job that opens up opportunity for Americans. I see it that way. I want to have as many of those jobs as we can create. America cannot afford to squander talent, and that is why I adamantly oppose this bill.

I am not for any compromises on this bill. This bill is a bad idea. It may be good politics, but it is very poor economics. We can minimize the impact on it by having a learning wage, and I hope we adopt it. If we are foolish enough to pass this bill, we can try to make it less damaging by having youth exemption. I would support it, and we will make it less harmful if we can have that. But, Mr. President, this bill is bad for America; it is bad for the very people who we claim to be concerned about.

I hope my colleagues will look at the cold reality of the situation and decide to vote no on this bill. I yield the floor.

Mr. FORD addressed the Chair.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. The Senator from Utah used my name a few moments ago about a balanced budget, I understand, or about a vote in 1982.

Mr. HATCH. No, I did not raise that.

Mr. FORD. Maybe it was the Senator from Minnesota.

Mr. HATCH. I did raise the issue of a balanced budget. I said that to me the only way we can tell, in my opinion, who is serious about trying to get Federal spending under control is to look at the two votes we have had in the 1980's. I do not know exactly how anybody voted on it.

Mr. FORD. Since the inference was made, Mr. President, I would like to straighten out my voting as part of the RECORD. I offered an amendment to that resolution requiring the President to submit a balanced budget, because that budget amendment required only Congress to do it and not the President. So my amendment lost 45 to 53, and you can imagine who voted against my amendment asking the President to submit a balanced budget. And then I offered another amendment to say that if the President submitted a budget that was not in balance, he would in that budget cover why he could not submit the budget as a balanced budget. Both of those amendments were defeated and both of them by 53 votes against and 45 votes for. So that indicates that it was a divided Senate that voted on it, and I suspect those from the other side of the aisle voted in opposition to the President having to do that.

But then in June of 1987, the amendment submitted by the Senator from Texas [Mr. GRAMM] required that the President submit a balanced budget by 9 to 15, the Congress had to then pass a balanced budget. I supported that amendment, and so for the RECORD I am not a Johnny-comelately as it relates to balancing the budget.

I might add that in the vote on the last budget, 60 percent of the Republicans in this Chamber voted against the President's budget. So I want this to be balanced. I think the Senator from Minnesota always couched his remarks that Members on both sides of the aisle have been opposed. But since we voted on the two balanced budget amendments in the eighties, Mr. President, I have constantly said that the executive should be an equal part with the legislative in trying to bring our expenditures into balance, and so then in 1982 and again in 1987, I think my position has been very clear. And my vote in June of 1987 on the trade bill, the amendment by the Senator from Texas—and I do not think anybody in this Chamber has any doubt about how conservative the Senator from Texas is—supporting that amendment

I think indicated my desire for a balanced budget.

I thank both managers of the bill for giving me an opportunity to express my position as it relates to a balanced budget.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I think my point is still well taken. I think one of the best ways to determine who is for balanced budgets and who is not is who voted for the ultimate balanced budget resolution. Frankly, 69 of us in 1982 did in both parties. There were 31 who did not. In 1987 there were 66 of us who voted for it. There were 34 who did not. I think you would find if you correlated the votes of those who did not, for the most part you would find that they are among those who voted consistently for more and more Federal spending, regardless of who is President.

So that is my point. Sincerity is a wonderful thing, but I also think that votes are wonderful things, too, and people ought to be aware of those two very crucial votes. I certainly was not trying to impugne the distinguished Senator from Kentucky, but I would say this, that even on those two amendments that he supported were defeated until the 1987 vote. And then I think the issue is who voted for the balanced budget then. Only 66. We lost by 1 vote then. We passed it in this body in 1982 by 69 votes, a two-thirds vote plus 2, 67 plus 2, went to the House and won with 60 percent of the vote but, of course, we did not have the requisite constitutionally-required two-thirds vote and so it failed. Had that passed in 1982—it would have been fully implemented 3 years later—I believe we would be well on our way to a balanced budget today because one thing every Member of Congress, to my knowledge, reveres is the Constitution of the United States.

When Michael Dukakis had a $40 million deficit this year, it was not because he was such a great balanced budget man or that he supported it, because he does not. It was because his Constitution requires him to balance the budget as Governor of that State. So he had no choice.

Now, neither would any subsequent President if we had passed that amendment. So again I call on our citizens all over the country, look at those 2 votes. They will tell you a lot about who is for a balance budget and who is not for a balanced budget.

Nevertheless, I would like to go back to this training wage because I think it is important, and I will start with this chart again because I think it is very important.

Mr. KENNEDY. Mr. President, I will just respond briefly to some of the points that have been made here over the past couple of hours.

One of the points that was made by the Senator from Utah and the Senator from Texas was the fact that if we provide any increase in the minimum wage, it is going to filter through the economy, it will have some impact through inflation.

We put in the RECORD what the Wharton School testified would be the impact. It was two-tenths of 1 percent; the second year, three-tenths of 1 percent—if we went to $5.05. We are not there. So it will be considerably less.

The economic impact would be like a 10-cent increase in the cost of gasoline, a $10 or $15 billion expenditure in the budget—$10 or $15 billion out of a budget of $200 trillion. That is the magnitude of the economic impact on it.

There are those who say we should not give the increase because it will be the cost of doing business. Slavery was a pretty efficient way of doing business, too. But we recognized that that was completely immoral, and we recognized that we were going to have to have some sense of decency in treating the American people. This issue was debated and accepted 50 years ago.

A number of our Republican colleagues supported that increase in 1976. As I mentioned earlier, a Republican President of the United States, Dwight Eisenhower, presided over three increases in the minimum wage.

Even Vice President BUSH now says he is for an increase. Which way do you want it—the way it is described by the Senator from Texas and the Senator from Utah or the way the Vice President, GEORGE BUSH, describes it? You cannot have it both ways.

The best test is what has been historic background. When you look at the historic background, these kinds of observations about increasing unemployment and inflation and the adverse impact on the economy are not borne out. We put that case in the RECORD.

Mr. President, why is it all right for the Senator from Utah and the Senator from Texas and the Senator from Massachusetts to get the sizable increase in our pay over the last 8 years, from $60,100-odd to $89,000? Evidently, that was not going to impact our economy so much.

We provided an increase in the cost of living for those in the Armed Forces. The President, a few months ago, signed an increase in the cost of living for Federal employees because the economy is doing so well. Why is it all right there but not all right for those doing the most difficult and most menial tasks in our society? They do not get it. The 16 million workers, the poorest workers, who want to work and not go on welfare, there is no way we are going to continue the great prosperity—alleged—on the backs of those individuals.

Now, we heard all about prosperity. You know the figures and the statistics. Seventy-six percent of the wealth in the country in the last 7 years goes to two-fifths of the American population. The bottom two-fifths have received only about 10 or 8 percent. There is that disparity and we want to say "No" to them now, "We are not even going to give you a cost-of-living increase." We are not talking about a pay increase. We are talking about a cost-of-living increase.

Shame on them, Mr. President. Shame on those that make that argument.

Our good friend from Texas talks about what about 150 years ago if we went up to those Massachusetts farmers and talked to them, do they want a minimum wage out there? Well, my goodness, we have seen what the Massachusetts taxpayers have been paying and I have supported them. I have supported agricultural products because I believe we are one country in one history, and I supported that last program and in the last 25 years, I daresay, there is not anyone coming from an industrialized State that has supported agriculture more than the Senator from Massachusetts. Those subsidies have gone from $5 to approximately $25 billion. I am glad the subsidies have increased. They are facing drought and they are facing difficulty and if we are going to see those farmers go underground, not only do we lose those farm families, we are going to see costs go up in the Massachusetts supermarkets. We understand that.

We are glad to reach out a helping hand.

But why do you make that point and say, "Oh, no; not these other individual Americans; no way. We are not going to provide an increase because it is going to cost something."

Those are arguments that have been made on each and every occasion when we have had the opportunity to debate this question, and as I say, the best evidence is not what we say here, but what the history has been.

I know the majority leader wants the attention of the Senate.

Let me just say we have made adjustments and changes in our training rates. The Senator from Utah boohoos the fact we increase by 100 percent the number of students hired. What he did not read was the other provisions of the amendment that permit the employer to petition for additional students if he wants it. The only test would be in displacing the full-time workers. That is the name of the game.

If the Senator from Utah differs with that, we differ.

But there is sufficient opportunity for the expansion beyond 12 students. We have put that in there. That will

be the test. Are you going to displace full-time workers? If not, hire as many as you want to.

That is the test, and we have simplified dramatically the existing program to make it easier. What we will not accept is the displacing of workers, many of them who are providing for their families with part-time employment. And that is the basic, fundamental issue.

Mr. President, I will be glad to go into some of these other issues, but I see our good friend and colleague, the majority leader, who wants to address the Senate, and I will withhold the comments until after he is recognized.

UNANIMOUS-CONSENT AGREEMENT—SENATE RESOLUTION 474

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, Senator WALLOP is going to submit a resolution on behalf of himself, Mr. DOLE, myself, Mr. NUNN and other Senators, and it is agreeable I believe with Mr. WALLOP and Mr. DOLE that the debate begin at 15 minutes of 1 today with a vote on the resolution to occur at 1 o'clock p.m. today.

Mr. WALLOP. Mr. President, that is fine by me if I might have or at least control half the time.

Mr. BYRD. Yes.

Mr. WALLOP. I appreciate the majority leader being part of the cosponsorship.

Mr. BYRD. Mr. WALLOP will be in control of half the time and I will be in control of the other half.

I make that request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that no amendments to the resolution be in order, no motion to recommit or commit with or without instructions be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. After we submit it, it would be my hope and preference that we have a rollcall vote on it.

Mr. BYRD. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on the resolution at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I ask for the yeas and nays on the resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, will the majority leader yield?

Mr. BYRD. I yield.

Mr. KENNEDY. As I understand, we will go back to the current unfinished business after the conclusion of that resolution.

Mr. BYRD. Yes.

Mr. KENNEDY. I was wondering if we could have the attention of the Senator from Utah to try to find out if there is going to be some opportunity or some possibility of moving to some vote on this measure. We have the amendment in the second degree. I am quite prepared to move toward a vote. I have had a number of inquiries from my colleagues about whether we will or will not.

As far as I am concerned, we are prepared to, after the disposition of the resolution, anytime move to a vote and get on with these other amendments.

I wanted to let the leader know that, and perhaps we may inquire of the Senator from Utah as to his disposition, so that we might know where we are.

Mr. BYRD. Mr. President, the order that was entered begins now, does it not?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. I have 7½ minutes under my control on that resolution. I will be happy to yield 4 minutes under the control of my time once the resolution has been adopted.

The PRESIDING OFFICER. The time will run from the time the resolution is introduced.

Mr. BYRD. Will the Senator submit the resolution and then let me yield 4 minutes of my time equally divided between Mr. HATCH and Mr. KENNEDY so that Mr. KENNEDY may have his question addressed?

SOVIET ABM TREATY VIOLATIONS

Mr. WALLOP. Mr. President, I send a resolution to the desk and ask that it be stated.

It is on behalf of myself, Mr. DOLE, Mr. BYRD, Mr. LUGAR, Mr. NUNN, Mr. WARNER, Mr. BOREN, Mr. WILSON, Mr. HELMS, Mr. SYMMS, Mr. MCCLURE, Mr. KASTEN, Mr. MCCAIN, and Mr. SIMPSON.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 474) in support of the President's policy regarding Soviet ABM Treaty violations.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. WALLOP. Mr. President, I yield to the majority leader.

Mr. BYRD. Mr. President, I thank the distinguished Senator, Mr. WALLOP.

I yield 2 minutes to Mr. KENNEDY and 2 minutes to Mr. HATCH.

Mr. HATCH. Mr. President, let me respond to the distinguished Senator from Massachusetts. As far as I can see, it does not appear that we are going to reach a vote today, although I would like to go to a vote on this at the earliest possible convenience.

I know that we have some other people who have expressed a desire to speak on this issue. I have a lot more to say on it.

I question whether we can get to a vote today.

But I have no problems with getting to a vote next week, and perhaps we can work that out. I do not know.

I will have to speak with both the majority leader and the minority leader and see what can be worked out.

Mr. KENNEDY. Mr. President, we have had, I think, a useful debate on this. If I could have the attention of the Senator from Utah, I would not be opposed to setting this aside and dealing with one of the other amendments. We have the amendment of the Senator from Illinois, Senator SIMON. We have an amendment of the Senator from Iowa, Mr. HARKIN. Both have indicated to me that they are prepared to go ahead, and I wanted to indicate to the leader if the Senator from Utah was satisfied we could set this temporarily aside and move ahead and try and get a vote on those if that would be a more agreeable way to proceed.

I am wondering if the Senator from Utah would tell us whether that could be?

Mr. HATCH. I would be inclinded to do that except for one thing. I do not see an awful lot more of debate time today and I want to cover some more points on this matter and I know that I have been asked by a few others to do so as well.

Whether they are here on Friday or not I do not know.

I would like just to have the opportunity of seeing how many are here.

I have to be gone during the pendency of this matter and for quite a time afterward because of former Senators and others who are visiting me in my office. But I will be back here. I think I can make it back here by 2:30 and we will begin the debate again and go from there.

Mr. BYRD. I join with the distinguished Senator from Massachusetts in expressing the hope that this amendment could be temporarily set aside to allow one or two of the other amendments that are around to be called up, debated, and perhaps disposed of without prejudice, of course, to this one. It would simply be set aside, if the Senator could allow us to set the amendment temporarily aside after this rollcall vote.

Mr. HATCH. If I could make a point, if the Simon amendment came up, it would have to be amended also because there are those on our side who would like to amend the Simon

amendment. So we would not reach a vote today, in any event.

Why should we not get rid of this one problem so that we are pretty well into next Tuesday, or whenever it is, and have a vote on this problem and handle it straight up that way, and I will be happy to move ahead to any of the other amendments at that time.

Mr. BYRD. Of course, an objection would not allow us to set this amendment aside.

I was just simply asking the distinguished Senator if we could in the interest of saving some time on this and not going out at an early hour today when there is plenty of work to be done on this bill, to be able at least call up another amendment. If an amendment in the second degree is offered to that that is well and good. There could be some debate on that. That would be that much done, even though we may not dispose of such.

Mr. HATCH. I do not believe there will be a vote today anyway.

Why do we not see if we can get pretty well to the end of the debate on this amendment? In the meantime, I will consult with the minority leader to see if he would like to move ahead.

If those who have similar amendments to Senator SIMON would like to move ahead, I would have no objection at that time to moving ahead, but I cannot be back myself until 2:30.

Mr. KENNEDY. Mr. President, I know we are running out of time. I want to indicate that if we have a good idea what amendments are there. We are prepared to deal with them and debate them. We have been petitioned by the Senator from Illinois and the Senator from Iowa who have an interest in moving ahead and resolving their particular amendments.

I will follow the disposition of the leadership on it, but I want to give the assurance that we are prepared to deal with any of those and to continue on through the afternoon and hopefully dispose of them.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BYRD. Mr. President, I believe almost all of my time has expired. I would suggest, following the rollcall vote, that we see if it would be agreeable to the minority to temporarily set aside the pending amendments and go to another amendment. We will explore that at that time.

Mr. President, I ask unanimous consent that Senators may introduce statements into the RECORD as though read on the subject matter of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming.

Mr. WALLOP. Mr. President, I thank the majority leader. Before he leaves the floor, I thank him particularly for the cooperation of his staff in trying to make this a truly bipartisan resolution.

Mr. President, the resolution before the Senate is both timely and critical in its importance. The Director of the Arms Control and Disarmament Agency, General Burns, has just returned from heading a high-level United States delegation to Geneva for the third review conference of the ABM Treaty. That conference is mandated by the ABM Treaty itself.

Mr. President, the resolution before us is nothing more than a continuation of the strong, bipartisan statements this Senate has made with respect to Soviet compliance to the ABM Treaty, and in particular, the Krasnoyarsk radar violation. In February 1987, by a vote of 93 to 2, the Senate declared that the Krasnoyarsk radar is an "important obstacle to the achievement of acceptable arms control agreements" and we called on the Soviet Union to "dismantle the newly-constructed radar at Krasnoyarsk."

Mr. President, I spoke of the conference from which General Burns has just returned. I might say that General Burns was scheduled to meet today with Soviet arms negotiator Viktor Karpov on this very issue.

Mr. President, at the ABM Treaty Review Conference in Geneva, the United States raised again United States concerns about Soviet compliance with the ABM Treaty. These concerns range from ambiguous activities that are probable or likely violations, such as rapid reloading of ABM launchers, to full-fledged, unequivocal violations, such as the Krasnoyarsk and Gomel radars. I regret that United States concerns, many of which have been under discussion for years, were not satisfactorily redressed by the Soviet Union. Let me quote from the unilateral U.S. statement that ACDA issued after the completion of the review:

> Throughout the review conference, the Soviet Union gave no indication that it was prepared to correct the violations without linking their agreement to do so to unacceptable demands.

Mr. President, many Senators were present at the briefing by General Burns on the review conference that occurred on Monday of this week. I am certain those Senators are well aware of the conditions that the Soviet Union is placing on the resolution of these violations. I also am aware that Senators on both sides of the aisle are in strong agreement that a Soviet violation cannot be corrected by the United States meeting some Soviet demand or giving some concession at the bargaining table. A violation is a violation and we should not have to bargain to get it corrected. Such an action would not promote good arms control. It would further erode the integrity of that process as it has eroded U.S. confidence in existing agreements.

Mr. President, the problems associated with Soviet violations of the ABM Treaty are not new to this Senate. The President first raised this issue in 1984 in his yearly compliance report. At that time the United States had not yet classified Krasnoyarsk as a violation, although there was interagency agreement that it constituted such a violation. The United States raised this issue, along with other Soviet ABM activities, in the Standing Consultative Commission [SCC]. By February 1985, a new compliance report charged the Soviet Union with a violation of the ABM Treaty. Throughout this entire period, from 1984 to present, the United States repeatedly raised this issue with the Soviet Union in the SCC and at high-level meetings. The Soviet Union has not responded to these strong United States efforts.

Mr. President, to demonstrate the seriousness of this matter, the United States chose General Burns, director of ACDA, to head a special high-level delegation for the review conference. There was a raging debate within the administration whether it was time to charge the Soviet Union with a material breach of the ABM Treaty because of the Krasnoyarsk violation. I know there is some disagreement in the Senate on this issue, but I wish to point out that no one in the administration disputes whether this violation constitutes such a material breach. Not the lawyers, not the State Department or ACDA, no one. The only question is whether the time is right to charge the Soviet Union with such a breach.

For my part, I along with 19 other Senators from both sides of the aisle, sent a letter to the President urging him to classify Krasnoyarsk a material breach of the treaty. The United States demonstrated remarkable restraint in not so classifying this violation a material breach after some 5 years of Soviet noncompliance. In my judgment, too much restraint. But the United States clearly informed the Soviet Union in Geneva that without the dismantling of the Kransnoyarsk radar, the "United States will have to consider declaring this continuing violation a material breach."

Mr. President, in September 1987, despite the fact that the ABM Treaty interpretation dispute was in full swing, the Senate voted 89 to 0 that the Krasnoyarsk radar is "an unequivocal violation of the Anti-Ballistic Missile Treaty" and that the Senate judges the Soviet Union to be in violation of its legal obligations under that treaty.

Mr. President, this resolution effectively has the support of the administration and both candidates for President. The administration has made

clear to me that they support the resolution, and General Burns reaffirmed at a meeting on Monday that it would be extremely helpful for this resolution to be passed before the upcoming ministerial between Soviet Foreign Minister Schevardnadze and Secretary of State Shultz.

Vice-President BUSH has on numerous occasions affirmed that the Krasnoyarsk radar must be dismantled before any future agreements on strategic arms can be concluded. I understand that Governor Dukakis stated recently, and I quote, "no new strategic arms agreements will be signed until the Soviet Union agrees to dismantle the Krasnoyarsk radar." Additionally, a recent letter signed by over 42 Senators affirmed this policy.

Mr. President, at the time of the signing of the INF treaty, the President announced in his 1987 compliance report that a new violation of the ABM Treaty had been discovered at Gomel. It was at that time that I, together with other Senators on both sides of the aisle, began working on legislation that would provide for some possible responses to Soviet violations. That legislation was offered to the INF treaty, and I regret it was defeated.

I believe it was defeated more because of the political atmosphere at the time than because a majority in this body does not support the need to take appropriate or proportionate responses to unequivocal Soviet violations of arms control agreements.

Mr. President, this resolution does not replace that legislation, but it is a step in the right direction. It urges the President to work with Congress to develop possible response options to Soviet ABM Treaty violations, and expresses the Senate's willingness to consider such responses that might require legislative action. Why must we prepare responses to Soviet violations? There are two reasons.

First, if treaties provide any real benefit to U.S. security, it follows that violations of those treaties deny us at least some of those benefits and thereby endanger U.S. security. Prudent, measured responses should be designed to bring the Soviet Union back into compliance, but also should compensate for the increased risk to United States national security.

Second, the Soviet Union must realize that the entire United States Government is serious about the Soviet Union's unwillingness to comply with its international obligations. We may have new arms control agreements coming before the Senate in the next few years on strategic and conventional arms. Let me suggest that as part of a comprehensive arms control strategy we need not just new agreements, but also a compliance policy that places a premium on full and unconditional compliance with existing agreements.

Without such a policy, Mr. President, there is little incentive for the Soviet Union to take the protestations of United States officials seriously. It is my hope that this resolution will send a strong message to the Soviet leadership, and give our negotiators the ability to speak for the entire Government on this matter. The ministerial starts on Thursday of next week. It is also my genuine hope that the administration, and future administrations, no matter who or which party occupies the White House, will work with the Congress to develop a comprehensive compliance policy to deal effectively with future Soviet noncompliance, restoring the integrity of the arms control process, and reducing the risk to United States security that Soviet violations pose.

Mr. President, I ask unanimous consent that two letters on the ABM Treaty issue, along with two essays on the subject of the ABM Treaty review conference written by William F. Buckley, Jr. and Frank J. Gaffney, Jr., and the U.S. unilateral statement after the review conference, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 6, 1988]

SPACE SURRENDER

(By William F. Buckley, Jr.)

The U.S. negotiating team has said to the Soviet negotiating team: Unless you get rid of Krasnoyarsk, we won't play START with you. Krasnoyarsk is that huge radar station in Siberia whose existence at that location violates the ABM Treaty. The ABM Treaty is that misbegotten satellite of SALT I, signed back in 1972. SALT I was the first of our treaties designed to reduce the deadlines of our joint inventory of nuclear weapons. A measure of how successful SALT I turned out to be in limiting strategic nuclear arms is this figure: 80 percent of existing Soviet nuclear missiles have been developed and constructed since SALT I. It might as well have been designated not as a treaty to "limit" strategic arms but as a treaty to "increase" strategic arms.

But now watch what is likely to happen. The Krasnoyarsk station is forbidden because its function is to manage a defense against nuclear missiles that, with one or two exceptions, is not permitted by the ABM treaty. You are allowed, under ABM, all the radar outposts you want to alert you to a surprise strike, but these must be within a specified number of miles of your coastline. If we wished to alert ourselves against a surprise Soviet nuclear attack by posting radar stations in Alaska, their function there would be very different from posting radar stations—of the kind called "phased array"—in the Midwest. Those stationed there would have a clear function of relating defensive, battle-management instructions to batteries of protective missiles around American cities, flashing instructions to ground-based and in due course to space-based missiles.

Now, we have known about Krasnoyarsk for about three or four years. Senior diplomats and military men publicly inveigh against it. The Soviet Union has been able to count on only one thing: namely, that the forward momentum of the arms control movement was not going to be deterred by Krasnoyarsk, any more than it was going to suffer from the Helsinki Accords, any more than it would suffer from violations of SALT I and ABM and the antichemical and antibacteriological accords.

So . . . in due course, while still protesting their violation of antecedent treaties, we made another treaty, the INF Treaty, which everyone is supposed to applaud, and most politicians feel they need to applaud.

But now that we are sounding serious about Krasnoyarsk, what if the Soviet Union agrees to dismantle it (if not actually destroy it)? Here is the analysis as given recently by Mr. Frank Gaffney, former assistant secretary of defense for international security policy:

"The dismantling of the Krasnoyarsk radar alone would hardly eliminate the strategic significance of accumulated Soviet investments in defenses. Still in place will be numerous deeply buried facilities for the protection of the leadership, tens of thousands of air defense radars and missiles, extensive civil and passive defense measures, to say nothing of the entirety of the residual Soviet ABM program. In short, the Krasnoyarsk radar's destruction would no more restore the integrity of the ABM treaty than a rapist's castration would restore the virginity of his victim."

The stark facts of the astonishing disintegration of our space program under the Reagan administration are suggested by another simple figure. The Soviets have developed a launch capability 10 times larger than the West's for placing many satellites in space. We are entitled to wonder how this can be of the country that only 20 years ago landed a man on the moon.

It is easiest to blame the politicians, and correct to do so, inasmuch as they have been tight-fisted and cranky about the space program, coming close to immobilizing it after the Challenger tragedy of 1986. But we have also to blame—and to say this makes one feel like a soldier shooting his lieutenant in the back during combat—the Joint Chiefs of Staff. There is an increasing consensus among experts in aerospace that we are in the coils of the same kind of asphyxiation we have seen over and over again, generation after generation, when a service resents the passage of money to another service but especially to an innovative branch.

Gen. Billy Mitchell is this century's most conspicuous martyr of that kind of military atavism. Nobody is better qualified to tell us than the Joint Chiefs of Staff how deteriorated our strategic position is. And yet they might as well be the three blind mice in respect of the utter, suicidal folly of the ABM Treaty's being kept alive in 1988.

[From the San Diego Union, Aug. 28, 1988]

ABM TREATY REVIEW COULD INCREASE RISKS FOR AMERICA

(By Frank J. Gaffney, Jr.)

If politics makes for strange bedfellows, arms control makes for positively bizarre sleeping arrangements. A case in point is the quintennial review of the 1972 U.S.-Soviet Anti-Ballistic Missile Treaty, which began last week in Geneva.

The posturing of the two governments during the run-up to this meeting has revealed the makings of a remarkable convergence of interests between the American Joint Chiefs of Staff and the leadership of

the Soviet Union. While there is no suggestion of active collusion between the two, it is striking to note the appearance of a common purpose: Both the U.S.S.R. and the JCS seem bent on ensuring that the United States remains undefended against ballistic missile attack.

Ever since Ronald Reagan announced in 1983 that he intended to explore a Strategic Defense Initiative (SDI) whose success would render ballistic missile-delivered nuclear weapons "impotent and obsolete." The Soviets have sought to block this program. In so doing, the U.S.S.R. has employed numerous devices: public relations campaigns, threats of military responses, and arms control initiatives, to name but a few.

Throughout, the Soviets have laid great stress on the ABM treaty. Indeed, they have sought to contrast the highly publicized American program—the stated objective of which is wholly uncompatible with the treaty's prohibition on territorial defenses against ballistic missiles—with their own declared fealty to this agreement. yet such rhetoric rings hollow when contrasted with the mounting evidence of the Soviet Union's own abiding commitment to strategic defenses.

Even though the IBM treaty seemingly committed the two parties to a state of mutual vulneraiblity to nuclear attack, the Soviets have continued unabated their massive investments in arrays of air, civil and leadership defenses. The cumulative effect of these defenses could be to enhance substantially the effectiveness of even relatively modest ABM systems.

Moreover, the Soviet Union has maintained a considerable effort in the field of anti-ballistic missile defenses itself. The U.S.S.R. today has the world's only deployed ABM capability, situated for the defense of Moscow. Drawing upon and adapting the technologies developed for this purpose, the Soviets have produced a multitude of near-term systems with ABM potential, such as mobile radars and interceptor missiles. They are also pursuing advanced technologies like lasers and particle beam weapons that will provide the U.S.S.R. with additional ABM options down the road.

Obviously, if the Soviets' opposition to the SDI is to be regarded as credible in the West, knowledge of the magnitude and significance of its defensive programs has to be kept to a minimum. Accordingly, the U.S.S.R. has sought with considerable success to keep the wraps on this part of its arsenal—notwithstanding the highly touted "new openness" of Soviet *glasnost.*

In order to obtain in the near future the capability to defend itself against ballistic missile attack, however, the Soviet Union has had to take a step which cannot be concealed. This involves the introduction of a nationwide complex of extremely powerful, large, phased-array radars (LPARs). These radars, each with faces the size of several football fields, take years to construct and are essential to the detection and tracking functions necessary for interception of attacking ballistic missiles.

Since they cannot be hidden, the Soviet Union has chosen instead to build nearly all of its LPARs in a manner nominally consistent with the ABM treaty. Indeed, with a single exception, every one of these radars can be squeezed through loopholes in the treaty—despite the fact that they are much larger and vastly more powerful than needed for the single early warning function intended by that accord.

The exception, of course, is the notorious LPAR located near Krasnoyarsk in Siberia. This radar, by virtue of its siting, orientation and performance characteristics unmistakably violates the ABM treaty. The willingness of the U.S.S.R. to invest in such a system—even though it would inevitably be detected and identified as a breach of the Soviet Union's arms control commitments—offers a troubling insight into the Soviet view of the sanctity of such commitments. The Krasnoyarsk radar also indicates that its gerrymandered sister radars are motivated by a similar agenda—the illegal defense of the Soviet Union against ballistic missile attack.

Interestingly, the blatant manner in which the LPAR at Krasnoyarsk violates the ABM treaty has complicated Soviet efforts to portray that accord as sacrosanct and the U.S.S.R. as its tireless defender. It also has made life more difficult for those in the West who extol the virtues of the ABM treaty and who for various reasons, would rather concentrate on "restoring the integrity" of the agreement than on active pursuit of comparable U.S. strategic defenses.

On the face of it, it seems difficult to believe the United States' Joint Chiefs of Staff would be among the latter group. After all, one would expect that the nation's senior military authorities are among the strongest proponents of U.S. strategic defense.

In fact, the Joint Chiefs in recent years have become serious impediments to the President's SDI program. The reasons have more to do with parochial efforts to preserve pet programs competing for increasingly scarce defense resources; than with any dissenting view of strategic doctrine or policy. Simply put the chiefs—as senior representatives of the armed services—accord SDI lower priority than a host of other weapon systems, particularly conventional ones like tanks, fighter planes and ships.

As the twilight of the Reagan administration dims the value of the Strategic Defense Initiatives most important political asset—the President's personal support—the JCS have successfully insisted that the expensive activities critical to the SDI's progressive vigorous experimentation and active preparation for deployment be scaled back.

In so doing, the chiefs have imposed on the program a deadly Catch-22. Uncertainties about the technical feasibility and availability of U.S. strategic defenses are cited persuasively to support a slower, less expensive SDI research and development program. Yet the only way to eliminate such uncertainties is to conduct a more aggressive more costly effort. As a successful SDI program will require still greater resources to produce a deployable system, the chiefs see all the more reason to stretch out and undermine its exploratory phase, ensuring that any results are slow in coming and inconclusive.

The Joint Chiefs' tepidness toward a U.S. strategic defense program contrasts sharply with their growing unease about the emerging Soviet capability in this area. The chiefs understand that widespread Soviet deployments of the ABM systems now being introduced could have considerable strategic significance. Moreover, they appreciate that the cumulative effect of the U.S.S.R.'s years of investment in strategic defenses is to offer the Soviet Union the option to deploy such systems far faster than could the United States.

This preoccupation with the reality of near-term Soviet break-out potential has prompted the Joint Chiefs of Staff to become among the most vehement advocates of the ABM treaty within the United States government. Their theory apparently is that continued U.S. compliance with the treaty and muted American diplomatic efforts to get the Soviets to take down the Krasnoyarsk radar will preclude this strategic nightmare.

Of course, there are two fundamental problems with this position. First, the Soviet break-out capabilities the Chiefs find so worrisome have all been put into place notwithstanding the ABM treaty. Hot production lines for modern anti-ballistic missile interceptors have been put into place, surface-to-air missile systems tested against ballistic missiles, LPAR's constructed, mobile ABM radars developed. All of these actions have been undertaken in a manner technically conforming to the treaty's limits—or in spite of them.

Second, the dismantling of the Krasnoyarsk radar alone would hardly eliminate the strategic significance of accumulated Soviet investments in defenses. Still in place will be numerous deeply buried facilities for the protection of the leadership; tens of thousands of air defense radars and missiles; extensive civil and passive defense measures, to say nothing of the entirety of the residual Soviet ABM program. In short, the Krasnoyarsk radar's destruction would no more restore the integrity of the ABM treaty than a rapist's castration would restore the virginity of his victim.

In light of the untenability of these positions, a cynic might be tempted to conclude that the Joint Chiefs of Staff's real agenda in flacking for the ABM treaty is their hope that by doing so they can fend off pressure for meaningful work on the SDI program. However marginal its value in constraining Soviet strategic defense activities, the treaty has proven enormously powerful in limiting the extent and the utility of work on their modest U.S. counterpart. In addition, this oblique opposition to a vigorous SDI permits the JCS to curry favor with those in Congress who are fetishists about the ABM treaty, many of whom profess to support reallocation of defense resources from strategic forces to conventional arms.

If such an assessment is correct, the lowest common denominator between the Soviet and JCS agendas may be realized in the ABM treaty review:

The Soviets will agree to abandon the Krasnoyarsk radar—probably going so far as to offer verifiably to render it incapable of operating, though perhaps stopping short of razing it. For its part, the United States will refrain from labeling this LPAR a "material breach" of the ABM treaty (a step which could establish under international law the U.S. right to reciprocate, for example, by testing or deploying the SDI in ways not permitted by the treaty). On this basis, the United States will declare itself satisfied that the integrity of the treaty is restored and, possibly, that it will not withdraw from that accord for roughly ten years.

Should this, in fact, prove to be the outcome of the ABM treaty review conference, it will mean that any realistic prospect of defending the United States against ballistic missile attack will be precluded for the foreseeable future. Unfortunately, the same cannot be said about Soviet defenses.

An early test of leadership may therefore be presented to Vice President Bush, a candidate campaigning for the presidency on a platform calling for deployment of the SDI as soon as it is ready and on whose watch—if he is elected—the Soviet ABM break-out might well occur. The nation needs to know

whether the ABM treaty review conference will be conducted, at his insistence, in accordance with his stated goals for the SDI—or along the lines sought by the Soviet Union and the Joint Chiefs of Staff.

U.S. SENATE,
Washington, DC, June 28, 1988.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As you know, the Senate voted overwhelmingly and the House voted unanimously last year to support your 1984 finding that the Soviet Krasnoyarsk radar was a clear violation of the SALT I ABM Treaty. Your 1985 report to Congress on Soviet SALT violations stated that the Krasnoyarsk radar violates the key provision of the ABM Treaty.

The Krasnoyarsk radar itself will have about ten times the power of each of the 12 U.S. Safeguard ABM radars only planned in 1969 for a U.S. nationwide ABM defense. Moveover, the siting of the Krasnoyarsk radar deep in the interior of the Soviet Union near many key ICBM complexes sacrificed at least 6 minutes of warning time. The high power, interior siting near strategic targets, and sacrifice of warning time all strongly suggest that Krasnoyarsk is intended for ABM battle management. This is contrary to the heart of the ABM Treaty.

As you said in your 1985 compliance report, "Militarily, the Krasnoyarsk radar violation goes to the heart of the ABM Treaty." The almost unanimous Congressional votes agreeing that Krasnoyarsk is a clear violation indicate that there will be strong support for your declaration that it is a "material breach" of the Treaty. We urge you to maintain this policy and to declare Krasnoyarsk a "material breach" at the forthcoming third five year review of the ABM Treaty. The credibility of American foreign policy will be severely damaged if your longstanding policy is changed.

Respectfully,

MALCOLM WALLOP
(With 15 cosigners).

U.S. SENATE,
Washington, DC, August 11, 1988.

President RONALD REAGAN,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As you approach the third five-year review of the 1972 Anti-Ballistic Missile (ABM) Treaty, we want to reaffirm our support for efforts to strengthen the treaty and ensure its continued contribution to our national security. In this regard, we are encouraged by your recent decision not to move at this time toward suspension or termination of U.S. obligations under the ABM treaty by declaring Soviet construction of the Krasnoyarsk radar a material breach of the treaty.

We strongly believe that Soviet violations of arms agreements can neither be excused nor ignored. As you know, the Senate went on record in February and in September 1987 declaring the Krasnoyarsk radar an unequivocal violation of the ABM Treaty and calling for the Soviet Union to dismantle it. We also are fully supportive of your position that no START agreement can be completed until the Krasnoyarsk radar issue is resolved to U.S. satisfaction.

However, it would be premature and counterproductive to move toward suspending or terminating U.S. adherence to the ABM Treaty in response to the Krasnoyarsk radar. The radar, although a serious violation, remains years from completion and thus poses no immediate threat to the United States. Moreover, the moratorium on construction of the radar that Soviet General Secretary Gorbachev announced last October suggests a Soviet willingness to discuss the radar's dismantlement. The recent statements by Soviet arms control official Viktor Karpov also appear to contain some encouraging signs on the Krasnoyarsk radar. We urge you to pursue these apparent openings at the ABM Treaty review this month in a manner that strengthens the treaty and reaffirms the obligations of both parties to abide by its terms.

We firmly believe that the ABM Treaty continues to contribute significantly to U.S. and NATO security by limiting Soviet strategic defenses. We understand that this view of the treaty's value to our national security is shared by the Joint Chiefs of Staff.

We urge you to continue to reject any course of action that could lead to suspension or termination of the treaty provisions. In the short run, such a course of action could cause us to miss an opportunity to settle the Krasnoyarsk radar problem through negotiation. In the longer run, it could undermine the treaty itself. As the first missiles are being destroyed under the recently ratified INF Treaty and the START negotiations are making steady progress, this is not the time to reverse course on arms control by stepping back from U.S. obligations under the ABM Treaty.

We look forward to working with you to resolve the question of the Krasnoyarsk radar in a practical and effective manner that reinforces the ABM Treaty regime and contibutes to further progress in arms control.

Sincerely,

Edward M. Kennedy, Dale Bumpers, J. Bennett Johnston, Jeff Bingaman, George J. Mitchell, John H. Chafee, Robert T. Stafford, Claiborne Pell, Alan Cranston, Daniel K. Inouye, Albert Gore, Jr., Terry Sanford, Timothy E. Wirth, Spark M. Matsunaga, Donald W. Riegle, Jr., Mark Hatfield, Frank R. Lautenberg, Christopher Dodd, John D. Rockefeller, IV, Patrick J. Leahy, Brock Adams, John F. Kerry, William Proxmire, Paul Simon, Daniel J. Evans, Jim Sasser, Tom Harkin, Quentin Burdick, Paul Sarbanes, Daniel P. Moynihan, Lawton Chiles, Dave Durenberger, Barbara A. Mikulski, John Melcher, Thomas Daschle, Carl Levin, Wyche Fowler, Jr., David Pryor, Howard M. Metzenbaum, John Glenn, Max Baucus, Wendell Ford.

U.S. UNILATERAL STATEMENT FOLLOWING ABM TREATY REVIEW

The United States and the Soviet Union conducted the third Review of the ABM Treaty as required at five-year intervals by the provisions of that Treaty. The Review was conducted from August 24, 1988 to August 31, 1988. The U.S. Delegation was led by William F. Burns, Director of the Arms Control and Disarmament Agency.

During the Review, the United States emphasized the importance of Soviet violations of the ABM Treaty, which are a threat to the viability of the Treaty. Throughout the Review Conference, the Soviet Union gave no indication that it was prepared to correct the violations without linking their agreement to do so to unacceptable demands.

Specifically, the United States discussed with the Soviets its serious concern that the Soviet Union's deployment of a large phased-array radar near Krasnoyarsk constitutes a significant violation of a central element of the ABM Treaty. Such radars take years to build and are a key to providing a nation-wide defense—which is prohibited by the Treaty. The Treaty's restrictions on the location, orientation, and functions of such radars are, thus, essential provisions of the Treaty. Hence, the Krasnoyarsk violation is very serious, particularly when it is recognized that the radar constitutes one of a network of such radars that have the inherent potential for attack assessment in support of ballistic missile defense.

In order for the Soviet Union to correct this violation, the Krasnoyarsk radar must be dismantled. The United States has been urging the Soviet Union for more than five years, both in the Standing Consultative Commission established by the Treaty and in other diplomatic channels, to correct this clear violation by dismantling the radar. During the Review, the U.S. outlined the specific Soviet actions necessary to correct this violation in a verifiable manner. The United States has also made clear that the continuing existence of the Krasnoyarsk radar makes it impossible to conclude any future arms agreements in the START or Defense and Space areas. The United States has observed a slowdown in construction, but this slowdown, or even a full construction freeze, would not be sufficient either to correct the Treaty violation or to meet U.S. concerns about the significant impact of the violation.

The United States cannot continue indefinitely to tolerate this clear and serious Treaty violation. The violation must be corrected. Until the Krasnoyarsk radar is dismantled, it will continue to raise the issue of material breach and proportionate responses. Nothing that occurred during the Review Conference or its completion should be interpreted as derogating in any way from right the U.S. has under international law with regard to any Soviet violation of the Treaty. Since the Soviet Union was not prepared to satisfy U.S. concerns with respect to the Krasnoyarsk radar violation at the Review Conference, the United States will have to consider declaring this continuing violation a material breach of the Treaty. In this connection, the United States reserves all its rights, consistent with international law, to take appropriate and proportionate responses in the future.

During the ABM Treaty Review, the United States also discussed the violation of the ABM Treaty involving the illegally deployed radars at Gomel. The U.S. also reserves its rights to respond to this violation in an appropriate and proportionate manner. The United States also discussed with the Soviet Union a number of ABM-related compliance concerns, the totality of which suggests that the Soviet Union may be preparing a prohibited ABM territorial defense. This is a particularly serious concern. As the President has noted, such a development would have profound implications for the vital East-West balance. A unilateral Soviet territorial ABM capability acquired in violation of the ABM Treaty could erode our deterrent and leave doubts about its capability.

The U.S. continues to have deep, continuing concerns about the implications of the pattern of Soviet non-compliance with the ABM Treaty. As President Reagan observed in December 1987: "No violations of a treaty can be considered to be a minor matter, nor can there be confidence in agreements if a

country can pick and choose which provisions of an agreement it will comply with * * *. Correcting their violations will be a true test of Soviet willingness to enter a more constructive relationship and broaden the basis for cooperation between our two countries on security matters."

The U.S. will not accept Soviet violations or a double standard of Treaty compliance, and reserves the right to take appropriate and proportionate responses in the future.

TERRY B. SHROEDER,
Spokesman, U.S. Delegation.

Mr. WALLOP. Mr. President, I ask unanimous consent that Senator KARNES be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, debates here in the U.S. Senate—whether on agriculture, arms control or tax reform—tend to concentrate on that which divides us. We don't usually touch on areas of consensus.

When we turn to foreign policy, foreign observers should not be misled. Underlying our sometimes loud debates is a great amount of consensus. Every now and then we have to pause, and take a moment to remind the world of this consensus which backs most American foreign policy.

I think all of my colleagues agree that arms control agreements, once ratified, must be abided by. Violations sour relations, cast existing treaties into doubt, and impede progress toward new ones.

Right now, Soviet violations of the ABM Treaty, as best illustrated by the large phased-array radar at Krasnoyarsk—an unequivocal violation of the ABM Treaty—are having precisely this effect.

We in the Senate have taken this position by margins of 89 to 0 and 93 to 2. Unfortunately, the Soviets have not yet understood our message.

The required 5-year review of the ABM Treaty was completed 2 weeks ago. At that review, ACDA Director William Burns reiterated our position. As in the past, the Soviets linked their compliance with the ABM Treaty to other demands.

Mr. Burns told them firmly that we cannot get into the business of rewarding the Soviet Union for compliance with its obligations. The United States issued a statement at the review's close, and I ask unanimous consent the the statement be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

UNITED STATES UNILATERAL STATEMENT FOLLOWING ABM TREATY REVIEW

The United States and the Soviet Union conducted the third Review of the ABM Treaty as required at five-year intervals by the provisions of that Treaty. The Review was conducted from August 24, 1988 to August 31, 1988. The U.S. Delegation was led by William F. Burns, Director of the Arms Control and Disarmament Agency.

During the Review, the United States emphasized the importance of Soviet violations of the ABM Treaty, which are a threat to the viability of the Treaty. Throughout the Review Conference, the Soviet Union gave no indication that it was prepared to correct the violations without linking their agreement to do so to unacceptable demands.

Specifically, the United States discussed with the Soviets its serious concern that the Soviet Union's deployment of a large phased-array radar near Krasnoyarsk constitutes a significant violation of a central element of the ABM Treaty. Such radars take years to build and are a key to providing a nation-wide defense—which is prohibited by the Treaty. The Treaty's restrictions on the location, orientation, and functions of such radars are, thus, essential provisions of the Treaty. Hence, the Krasnoyarsk violation is very serious, particularly when it is recognized that the radar constitutes one of a network of such radars that have the inherent potential for attack assessment in support of ballistic missile defense.

In order for the Soviet Union to correct this violation, the Krasnoyarsk radar must be dismantled. The United States has been urging the Soviet Union for more than five years, both in the Standing Consultative Commission established by the Treaty and in other diplomatic channels, to correct this clear violation by dismantling the radar. During the Review, the U.S. outlined the specific Soviet actions necessary to correct this violation in a verifiable manner. The United States has also made clear that the continuing existence of the Krasnoyarsk radar makes it impossible to conclude any future arms agreements in the START or Defense and Space areas. The United States has observed a slowdown in construction, but his slowdown, or even a full construction freeze, would not be sufficent either to correct the Treaty violation or to meet U.S. concerns about the significant impact of the violation.

The United States cannot continue indefinitely to tolerate this clear and serious Treaty violation. The violation must be corrected. Until the Krasnoyarsk radar is dismantled, it will continue to raise the issue of material breach and proportionate responses. Nothing that occurred during the Review Conference or its completion should be interpreted as derogating in any way from rights the U.S. has under international law with regard to any Soviet violation of the Treaty. Since the Soviet Union was not prepared to satisfy U.S. concerns with respect to the Krasnoyarsk radar violation at the Review Conference, the United States will have to consider declaring this continuing violation a material breach of the Treaty. In this connection, the United States reserves all its rights, consistent with international law, to take appropriate and proportionate responses in the future.

During the ABM Treaty Review, the United States also discussed the violation of the ABM Treaty involving the illegally deployed radars at Gomel. The U.S. also reserves its rights to respond to this violation in an appropriate and proportionate manner. The United States also discussed with the Soviet Union a number of ABM-related compliance concerns, the totality of which suggests that the Soviet Union may be preparing a prohibited ABM territorial defense. This is a particularly serious concern. As the President has noted, such a development "would have profound implications for the vital East-West balance. A unilateral Soviet territorial ABM capability acquired in violation of the ABM Treaty could erode our deterrent and leave doubts about its capability."

The U.S. continues to have deep, continuing concerns about the implications of the pattern of Soviet non-compliance with the ABM Treaty. As President Regan observed in December 1987: No violations of a treaty can be considered to be a minor matter, nor can there be confidence in agreements if a country can pick and choose which provisions of an agreement it will comply with. . . . Correcting their violations will be a true test of Soviet willingness to enter a more constructive relationship and broaden the basis for cooperation between our two countries on security matters.

The U.S. will not accept Soviet violations or a double standard of Treaty compliance, and reserves the right to take appropriate and proportionate responses in the future.

TERRY B. SCHROEDER,
Spokesman, United States Delegation.

Mr. DOLE. Mr. President, I spoke with ACDA Director Burns on Monday, and he told me that the only hope we have of bringing the Soviet Union into compliance is to stand united and firm. He told me that this Senate resolution—following our two earlier ones—is just what we need today.

The resolution reiterates our earlier positions, and points out that Krasnoyarsk stands between us and the good START Agreement we all hope to see.

The resolution avoids issues about which there is disagreement, and simply invites the President to work with Congress to develop responses to Soviet violations.

Let me be clear: I hope that complete Soviet compliance with the treaty will cancel our need to consider responses. But for now, we must remind the Soviets that we cannot tolerate violations and remain idle forever.

This language has been carefully worked on both sides of the aisle, and with the administration. As I said, Director Burns says this is just the right touch.

We are all indebted to the Senator from Wyoming [Mr. WALLOP] for authoring this resolution, and for working so hard with other Senators to produce a document we all agree on.

I would also like to thank the Senator from Indiana [Mr. LUGAR] for all the work he has done.

As always, I thank the majority leader for standing together with me when our country needs to speak in a truly bipartisan fashion. His cosponsorship sends a clear message to Moscow, as will the unanimous backing I am sure this resolution will have.

Mr. HELMS. Mr. President, the key national security issue before the American people in the 1988 campaign is whether the ABM Treaty should continue to hamstring our best proportionate response to the multiple confirmed Soviet violations of existing arms control treaties—an accelerated

and expanded SDI Program and deployment of strategic defenses now. At the same time, the viability of the ABM Treaty is the single most crucial issue in United States-Soviet relations.

In 1987, both Houses of Congress voted unanimously to support President Reagan's 1984 finding that the Soviet Krasnoyarsk radar was an "unequivocal violation" of the ABM Treaty. The House voted 410 to 0 and the Senate voted 89 to 0 in declaring that the Soviet Krasnoyarsk radar is an unequivocal and clear violation of the ABM Treaty.

But, Mr. President, despite this clear unanimity between the executive and the legislative branches, the United States has tolerated Krasnoyarsk for 5 years, with no deterrent response. The United States has tolerated Krasnoyarsk ever since the United States first detected it in July 1983, after it had reportedly been under construction for over 3 years. Thus logistical planning specifically for Krasnoyarsk was underway at the highest level of the Soviet leadership in early 1979, precisely when the SALT II Treaty was signed. Indeed, the illegal Krasnoyarsk radar itself clearly was planned by Soviet leader Brezhnev in May 1972, precisely when the SALT I ABM Treaty was signed. Thus the origins of the illegal Soviet Krasnoyarsk radar can be traced back to the very beginning of United States-Soviet strategic arms limitation treaties in 1972.

This plain fact, derived from physical evidence in program analysis, speaks volumes about Soviet intentions to negotiate deceptively in the 1972 SALT I Agreements and the 1979 SALT II Treaty, and to sign these three agreements fully intending from the very outset to violate their very core provisions.

Indeed, there is also dramatic, previously highly classified, direct evidence of Soviet leadership intentions to negotiate deceptively and to violate the SALT I interim agreement regarding the deployment of the Soviet SS-19 illegal heavy ICBM.

I therefore strongly agree with the U.S. unilateral statement of August 31, 1988, following the third "ABM Treaty Five-Year Review," which said:

> The United States cannot continue indefinitely to tolerate this clear and serious treaty violation. The violation must be corrected. Until the Krasnoyarsk radar is dismantled, it will continue to raise the issue of material breach and proportionate response. Since the Soviet Union was not prepared to satisfy U.S. concerns with respect to the Krasnoyarsk radar violation at the Review Conference, the United States will have to consider declaring this continuing violation a material breach of the Treaty. In this connection, the United States reserves all its rights, consistent with international law, to take appropriate and proportionate responses in the future.

Mr. President, I reemphasize the direct, hard evidence that the Soviets signed the 1972 SALT I interim agreement and the SALT I ABM Treaty fully intending to violate both agreements from the very outset. The late Soviet leader Brezhnev clearly was planning the internetted, integrated 10 LPAR ABM Battle Management Radar network, including the illegal Krasnoyarsk radar, at the very time he signed the ABM Treaty on May 26, 1972. Moreover, Brezhenv was clearly planning to deploy the illegal heavy SS-19 ICBM in violation of the SALT I interim agreement precisely when he signed that agreement also on May 26, 1972. Moreover, President Reagan has reported that the logistical planning specifically for the illegal Krasnoyarsk radar was underway on June 18, 1979, precisely when Brezhnev also signed the SALT II Treaty. And we now also know that Brezhnev signed SALT II, intending to violate it from the outset, with the SS-24, SS-25, and SS-26 ICBM's.

In October 1987, the new Soviet leader Gorbachev unilaterally declared a Soviet 1-year moratorium on the construction of their illegal Krasnoyarsk radar, as a gesture of good faith. But recently there have been press reports that the Soviets have nevertheless continued to construct the illegal Krasnoyarsk radar for the past year, even despite the new Soviet leader Gorbachev's duplicitous pledge to suspend all such construction.

Mr. President, the construction of the elaborate military personnel housing facilities for the radar's operational technicians, including even schools and playgrounds for the children, has reportedly been completed, and these huge facilities are being occupied. This indicates clearly that the Soviets intend to make the Krasnoyarsk radar operational.

More significantly, extensive tracks in the snow last winter around the Krasnoyarsk radar were reportedly detected, confirming that installation of the internal electronics inside the externally completed radar facility was underway.

Thus there was no moratorium on Krasnoyarsk's construction, as Gorbachev falsely declared. Brezhnev repeatedly lied, and now Gorbachev is following suit. Should America continue to be deceived by the duplicity of Soviet leaders? How should we deal with the Soviet Krasnoyarsk radar violation in the 1988 political campaign?

Both Presidential candidates agree that the Krasnoyarsk radar is a clear violation of the ABM Treaty, but the Republican platform states that if the radar is not dismantled, it would constitute a material breach of the treaty.

In contrast, Governor Dukakis has stated that the ABM Treaty has made a vital contribution to our security and should be preserved. But in contradiction of his hopes of preserving the ABM Treaty, Governor Dukakis has also in fact conceded that Krasnoyarsk is a clear violation of the ABM Treaty, in agreement with President Reagan and the entire Congress.

Mr. President, American voters are entitled to ask Governor Dukakis some tough questions about his contradictory position on the Krasnoyarsk violation. If Krasnoyarsk is a serious and clear violation of the ABM Treaty, how does the treaty serve American national security interests, and why should America preserve a treaty that the Soviets have been violating from the outset? I repeat: Why should we preserve a treaty that the Soviets have been violating from the outset? Would this be unilateral disarmament and appeasement?

The unilateral disarmament lobby in the Congress is even trying to legislate its own narrow, unilateral interpretation of the ABM Treaty, as well as funding cuts crippling the SDI Program, precisely when long-continuing Soviet violations have forced President Reagan to be faced with declaring a Soviet material breach of the treaty. But the best proportionate response to Krasnoyarsk that President Reagan is considering involves accelerating and expanding the SDI Program, and deploying strategic defenses now. For these reasons, President Reagan wisely vetoed the fiscal year 1989 defense authorization bill.

Mr. President, the unilateral disarmament lobby in Congress is continuing its efforts to hamstring U.S. strategic defenses in the fiscal year 1989 defense appropriations bill, and even in a continuing resolution if there is one. I will support President Reagan's declared intention to veto both bills if they contain harmful arms control provisions.

The Soviet Krasnoyarsk violation has been discussed endlessly in diplomatic, Standing Consultative Commission, Ministerial, and even Presidential channels at four summits for 5 years. While the Soviets have continuously refused to correct this violation, President Reagan has reported to Congress that: Militarily, the Krasnoyarsk radar violation goes to the heart of the ABM Treaty. Thus diplomatic and even Summit negotiations have been futile.

The entire credibility of American foreign policy as at stake if the United States fails to do something about Krasnoyarsk in terms of deterrent programs.

I therefore urge President Reagan to declare the Soviets to be in material breach of the ABM Treaty, and to announce some United States proportionate response, in the forthcoming September 23, 1988, United States-Soviet Foreign Ministers meetings at the United Nations. The unanimous congressional votes on the Krasnoyarsk violation indicate that Presi-

dent Reagan already has strong support for these actions. As one Senator, I will certainly continue to strongly support President Reagan in these actions.

I urge my colleagues to vote for this amendment I am cosponsoring. I repeat that at this crucial time in United States-Soviet relations, the entire credibility of American foreign policy is at stake. Five years is enough. We cannot tolerate Soviet material breaches of arms treaties any longer without taking some programmatic action.

Moreover, given the desire of the congressional unilateral disarmament lobby to preserve the ABM Treaty, even in the face of the clear Soviet violations which they acknowledge, the 1988 campaign should be a referendum on the viability of the ABM Treaty and the necessity of immediate deployment of an accelerated and expanded SDI.

Should the United States appese the Soviets by unilaterally complying with a narrow interpretation of the ABM Treaty explicitly rejected by the Soviets in the original 1969-72 ABM Treaty negotiations, crippling our vital SDI Program, in the face of longstanding Soviet material breaches of the treaty?

Should the United States unilaterally disarm itself, in the face of longstanding, confirmed Soviet violations of all existing arms control treaties?

Or should the United States take a proportionate response to Krasnoyarsk, accelerate and expand SDI, deploy strategic defenses now, stop scrapping operational Poseidon submarines, fully modernize our ICBM and bomber forces, continue the testing of our deterrent nuclear weapons, and test and deploy an ASAT system?

I believe that the American voters will reject appeasement and unilateral American disarmament in the face of the confirmed Soviet material breaches of SALT I and SALT II.

Mr. WALLOP. Mr. President, let me just conclude by saying that this is no run-of-the-mill Senate resolution. It is necessary that we send a strong bipartisan message to the Soviet Union on behalf of our negotiator, General Burns, at this ministerial conference. These violations are a threat to the security and the safety of the people of the United States. They must not be traded. They must be addressed and redressed by the Soviet Union.

Mr. President, I believe I have used up all of my time and I believe the majority leader may have a minute on this.

I thank him again for the cordial response of his staff and himself.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

Mr. President, the Senate has gone on record before in the 100th Congress declaring that the Soviet radar at Krasnoyarsk is a clear violation of the ABM Treaty. We passed Senate Resolution 94, which I offered, along with the distinguished Republican leader in January 1987, declaring this radar a "clear violation" of the ABM Treaty.

This violation must be corrected. Until it is corrected, successful conclusion of further arms limitation agreements will be virtually impossible. This position has broad, bipartisan support in the Senate.

At the recently concluded ABM review conference, very little progress was made on this issue. The Soviets have not yet agreed to correct the problem created by the radar at Krasnoyarsk. News reports today indicate there may be some grounds for hope that this issue will be resolved, but hope is not sufficient. There must be clear and concrete measures which correct this problem.

In adopting the resolution before us today, the Senate reaffirms its longstanding position that the radar is a violation of the ABM Treaty, that it must be corrected, and that failure to correct the violation could impede further progress in United States-Soviet attempts to reach further agreements. I am hopeful that Mr. Gorbachev will hear this bipartisan message, and that he will remove this obstacle and correct this violation.

Mr. McCAIN. Mr. President, any violation of a treaty is important, regardless of the severity of that violation. The entire history of diplomacy tells us that treaties are only meaningful or safe to the extent that all parties concerned strictly obey them. The moment that minor violations are tolerated, major violations follow, and treaties turn from a source of trust to a source of distrust and conflict.

The Soviet breach of the ABM Treaty at Krasnoyarsk is of unique importance because it is a symbol of the future status of our relations with the U.S.S.R., our future ability to make arms control work, and our own courage in enforcing arms control treaties that really do reduce the risk and cost of war.

The large phased-array radar at Krasnoyarsk does not directly threaten the United States, and it is possible to find a host of excuses for the Soviet action. It is a relatively small violation in terms of its immediate military impact, although no violation that involves a 30-story radar and an 18-story transmitter, can be called small in any other sense.

THE SOVIET VIOLATION AT KRASNOYARSK AND ITS IMPACT ON START

The fact remains, however, that we are now seriously discussing massive reductions in strategic forces. No matter how we structure the verification of these reductions, we will still be faced with the fact that verification is meaningless without enforcement. Further, any Soviet violation of START or any other critical arms treaty will start with small steps like Krasnoyarsk.

Arms control can never enhance our security without strict adherence to arms control treaties. This is particularly true when we talk about 50 percent reductions in our online delivery strength.

No matter how we structure a START agreement, we will create a postreduction nuclear balance where the U.S.S.R. will have a major incentive to cheat or develop a breakout capability.

We have so many online strategic weapons today that it is almost inconceivable that the U.S.S.R. could covertly alter the balance to the extent it would have any incentive for nuclear conflict or nuclear blackmail. This situation will change immediately when each side has only 6,000 weapons online and will change radically if we go on to reductions to 3,000 weapons online.

We must make it firmly clear to the U.S.S.R. that the price of a treaty is 100-percent compliance, and that the United States will react firmly and decisively to any violation of a treaty. If we are to forge a national consensus around START, we must also operate on the principle that no administration will ever ignore a violation for temporary political advantage, and that no Congress will ever divide on political and ideological grounds in a way that will allow the U.S.S.R. to exploit a violation.

This does not mean we should not talk to the Soviet Union or try to negotiate. We should not overreact, or risk taking action on the basis of a misunderstanding. But, we should never underreact. We should not let years and years elapse in which we fail to seek to enforce the terms of a treaty. We also should not become trapped in technical niceties, or negotiating substitutes for compliance that legitimize a violation.

The time has come to firmly declare that Krasnoyarsk is a material breach of the ABM Treaty. We need to make it unambiguously clear to the U.S.S.R. that no further progress can take place on other arms control negotiations, and no additional arms control treaty can hope to win approval of ratification by the Senate, until this situation is dealt with and the Soviet Union ceases its violation.

THE IMPACT OF KRASNOYARSK ON STRATEGIC DEFENSE AND SDI

Further, we need to recognize that Krasnoyarsk is symbolic of the fact that the Soviet rhetoric about glasnost has in no way affected the fact the U.S.S.R. is still spending far more on strategic defense than we are.

Recent reports by the Secretary of Defense and Joint Chiefs of Staff have made it clear that:

In 1987, the Soviet Union was still spending nearly $5 billion a year on procuring new strategic missile defense weapons, command and control systems, and sensors, and the United States was spending roughly half a billion dollars. In short, the U.S.S.R. was spending roughly 10 times as much as the United States.

During the period from 1965 to 1987, the U.S.S.R. built up a lead in the procurement of these strategic defense systems that was worth $90 billion if costed in U.S. prices. Further, the United States paid virtually nothing to procure strategic defenses between 1976 and 1984.

While the current level of Soviet spending on those research and development programs which are directly equivalent to our SDI Program is classified, if the Soviet effort is costed at United States prices, it was far greater than that of the United States during the decade between 1973 and 1983, and it will still significantly larger than that of the United States if the Congress fully funds President Reagan's fiscal year 1989 Defense budget request.

In 1987, the Soviet Union was still spending an additional $16 billion annually on procuring new strategic air defenses and the United States was spending roughly $8 billion. The U.S.S.R. was spending roughly twice as much as the United States.

During the period from 1965 to 1987, the U.S.S.R. built up a lead in the procurement of strategic air defenses that was worth $240 billion, if costed in U.S. prices. Further, the United States paid less than $3 billion a year between 1976 and 1984, versus $15 to $17 billion for the U.S.S.R.

While we phased out all our Safeguard strategic missile defenses in 1976, and did not resume a serious research effort until SDI began in 1983, the Soviet ABM system around Moscow has been operational since 1968. The U.S.S.R. will also complete the deployment of a radically improved two-layer ABM system in 1989–90, with 100 launch sites with new Galosh and Gazelle endo- and exo-atmospheric interceptors, a massive new multifunction phased array radar at Pushkino, nine new large phased-array radars or LPAR's, and a new early warning, acquisition, and tracking radar network.

We are studying ways to an improved Patriot and other mobile, ballistic missile defenses. The U.S.S.R. is actually depoloying the SA-10 missile, and will soon deploy the SA-X-12B Giant missile, which both have limited ballistic missile defense capability. It may be preparing to deploy new sensors and command and control systems to use these missiles in a ballistic defense role. It has definitely deployed a flat twin ABM radar and Pawn Shop an outside an ABM deployment area or test range to conduct experiments which violate the ABM Treaty.

We have a token Civil Defense Program. The U.S.S.R. has a strong one. The U.S.S.R. has a massive Deep Shelter Program which can survive most of our nuclear strikes. We do not have a single survivable shelter.

We phased out all strategic surface-to-air defenses in 1975. The U.S.S.R. still has 8,560 strategic surface-to-air missile launchers.

We have only about 300 strategic air defense interceptors, and 100 radars. The U.S.S.R. has 2,250 interceptors and 10,000 radars.

We have only the most limited ASAT Program. The U.S.S.R. has a coorbital ASAT interceptor operational, and has the potential to use its existing ABM's and ground based lasers in this role.

We have no current evidence that the U.S.S.R. is seeking a break out capability in strategic defense, or the ability to use such defenses to enhance its capacity for nuclear blackmail or somehow win a nuclear exchange.

We do, however, have absolute evidence that the Soviet version of SDI has been going on much longer, and is much closer to deployment than our own. Quite aside from its impact on START, the Soviet violation at Krasnoyarsk is a symbol of the fact that the Soviet Union may yet try to exploit its Strategic Defense Progam and technology to win a decisive advantage.

FIRMNESS AND RESOLUTION ARE THE PRICE OF PEACE

The day may yet come when we can sharply reduce or eliminate our strategic competition with the U.S.S.R. That day, however, is far away at best. In the interim, we must not falter. We cannot afford to ignore Krasnoyarsk any more than we can afford to cut our own SDI Program as if the Soviet effort did not exist. There is no meaningful road to arms control that follows a path of weakness. There is no way to prevent war by making it more desirable to our most dangerous enemy.

Mr. BUMPERS. Mr. President, I am please to be a cosponsor of this resolution concerning the Krasnoyarsk radar. This is one ABM issue where there is a bipartisan consensus in the Senate, as the vote on this resolution will show. There is no doubt that the Krasnoyarsk radar is a violation of the ABM Treaty. The question all along has been, what is the best way to deal with this?

The approach the Reagan administration has followed since the radar was discovered 5 years ago has been the proper one: Keep the pressure on, but do not take steps that would be counterproductive. This is why the President's recent decision not to declare the Krasnoyarsk radar a material breach at the present time was the correct one, and from news reports it sounds like this strategy is about to pay off. There appears to be movement afoot to resolve this issue, which certainly would pose a major obstacle to a new START agreement if it were not resolved.

I would note that both the Joint Chiefs of Staff and the State Department were urging the President not to declare Krasnoyarsk a material breach, our top national security professionals. I also note that on short notice, 42 Senators signed a letter also urging this course of action on the President. I am pleased with the President's decision, and I am pleased that the Senate is continuing to express its bipartisan support for the successful resolution of the Krasnoyarsk issue.

I ask unanimous consent that a copy of the August 11 letter to the President on this issue signed by 42 Senators be placed in the RECORD at the conclusion of my remarks, along with a copy of the New York Times article from July 15 entitled "Split Is Reported Over ABM Accord," which reports the positions of the Joint Chiefs of Staff and the State Department.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, August 11, 1988.

President RONALD REAGAN,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As you approach the third five-year review of the 1972 Anti-Ballistic Missile (ABM) Treaty, we want to reaffirm our support for efforts to strengthen the treaty and ensure its continued contribution to our national security. In this regard, we are encouraged by your recent decision not to move at this time toward suspension or termination of U.S. obligations under the ABM treaty by declaring Soviet construction of the Krasnoyarsk radar a material breach of the treaty.

We strongly believe that Soviet violations of arms agreements can neither be excused nor ignored. As you know, the Senate went on record in February and in September 1987 declaring the Krasnoyarsk radar an unequivocal violation of the ABM Treaty and calling for the Soviet Union to dismantle it. We also are fully supportive of your position that no START agreement can be completed until the Krasnoyarsk radar issue is resolved to U.S. satisfaction.

However, it would be premature and counterproductive to move toward suspending or terminating U.S. adherence to the ABM Treaty in response to the Krasnoyarsk radar. The radar, although a serious violation, remains years from completion and thus poses no immediate threat to the United States. Moreover, the moratorium on construction of the radar that Soviet General Secretary Gorbachev announced last October suggests a Soviet willingness to discuss the radar's dismantlement. The recent statements by Soviet arms control official Viktor Karpov also appear to contain some encouraging signs on the Krasnoyarsk radar. We urge you to pursue these apparent openings at the ABM Treaty review this month in a manner that strengthens the

treaty and reaffirms the obligations of both parties to abide by its terms.

We firmly believe that the ABM Treaty continues to contribute significantly to U.S. and NATO security by limiting Soviet strategic defenses. We understand that this view of the treaty's value to our national security is shared by the Joint Chiefs of Staff.

We urge you to continue to reject any course of action that could lead to suspension or termination of the treaty provisions. In the short run, such a course of action could cause us to miss an opportunity to settle the Krasnoyarsk radar problem through negotiation. In the longer run, it could undermine the treaty itself. As the first missiles are being destroyed under this recently ratified INF Treaty and the START negotiations are making steady progress, this is not the time to reverse course on arms control by stepping back from U.S. obligations under the ABM Treaty.

We look forward to working with you to resolve the question of the Krasnoyarsk radar in a practical and effective manner that reinforces the ABM Treaty regime and contributes to further progress in arms control.

Sincerely,

Edward M. Kennedy, Dale Bumpers, J. Bennett Johnston, Jeff Bingaman, George J. Mitchell, John H. Chafee, Robert T. Stafford, Claiborne Pell, Alan Cranston, Daniel K. Inouye.

Albert Gore, Jr., Terry Sanford, Timothy E. Wirth, Spark M. Matsunaga, Donald W. Riegle, Jr., Mark Hatfield, Frank R. Lautenberg, Christopher Dodd, John D. Rockefeller IV.

Patrick J. Leahy, Brock Adams, John F. Kerry, William Proxmire, Paul Simon, Daniel J. Evans, Jim Sasser, Tom Harkin, Quentin Burdick.

Paul Sarbanes, Daniel P. Moynihan, Lawton Chiles, Dave Durenberger, Barbara A. Mikulski, John Melcher, Thomas Daschle.

Carl Levin, Wyche Fowler, Jr., David Pryor, Howard M. Metzenbaum, John Glenn, Max Baucus, Wendell Ford.

[From the New York Times, July 15, 1988]

SPLIT IS REPORTED OVER ABM ACCORD—JOINT CHIEFS ARE SAID TO RESIST A MOVE THAT WOULD EASE TREATY OBLIGATIONS

(By Michael R. Gordon)

WASHINGTON, July 14.—Disagreeing with the civilian leadership of the Pentagon, the Joint Chiefs of Staff are resisting a move that would allow the United States to suspend some of its obligations under the 1972 Antiballistic Missile Treaty, Administration officials say.

The position of the Joint Chiefs is consistent with their strong concern that the Soviet Union would be in a better position to move ahead over the short run with the development of antimissile defensive systems if treaty restraints are loosened, according to Administration officials.

The Reagan Administration has been deeply divided over whether to step up its charges of Soviet cheating by declaring that Moscow has committed a "material breach" of the 1972 Antiballistic Missile Treaty by building an early warning radar system in central Siberia. Such a move would allow the United States to suspend some of its ABM treaty obligations.

It is not clear what steps, if any, the United States would actually take if the Administration asserted the right to suspend some treaty obligations. Senior officials say the Administration is not considering abrogation of the entire treaty.

Some senior officials see a declaration of "material breach" as a way to demonstrate American resolve over the violation. But opponents fear that the move is also being urged by some hard-liners as part of a long-term strategy of dropping adherence to the ABM treaty.

VIGOROUS DISCUSSION ON THIS

"The President has heard vigorous discussion on this," the White House spokesman, Marlin Fitzwater, said Monday, alluding to an unannounced meeting that President Reagan held with his top advisers on July 6. Mr. Fitzwater said Mr. Reagan had not made a decision.

Opposing the move are the State Department and the Joint Chiefs of Staff. On the other side are civilian Defense Department officials, hard-line arms control advisers and some Cabinet officials, such as Attorney General Edwin Meese 3d and Treasury Secretary James A Baker 3d.

The issue has come to the fore because the Administration has told the Soviets that it would like to hold the periodic five-year review of the ABM treaty sometime between today and July 22. The Soviet Union has not officially said whether these dates are acceptable. Under the treaty terms, the review is to be held before early October.

The United States has already charged that the Soviet early radar system at Krasnoyarsk violates the ABM treaty because it is not situated on the periphery of the Soviet Union and oriented outward as the treaty requires. It has demanded that the radar be dismantled.

LINKED TO STRATEGIC ACCORD

Moscow has denied the charge of violation but has also announced a temporary moratorium on further construction.

State Department officials say the United States has already put the Soviets on notice that it will not conclude a new strategic arms treaty until the dispute over the Krasnoyarsk radar is resolved.

And the Soviets are reported to have hinted that they may take some corrective action if an agreement can be worked out on anti-missile systems at the Geneva arms talks.

One question that has been raised is whether a charge of material breach would prompt the Soviets to take new corrective action or deprive them of a face-saving way out.

Another issue that pits the State Department officials against Administration hard-liners is whether the violation is so severe that it warrants a charge of "material breach."

MEETING OF TOP OFFICIALS

When President Reagan met with top officials on July 6, Defense Secretary Frank C. Carlucci is said to have supported the charge of a "material breach," officials say. So did Edward L. Rowny, a conservative arms control adviser to President Reagan; Attorney General Meese, and William Graham, the science adviser to President Reagan. Some officials say Treasury Secretary Baker also endorsed this view.

John C. Whitehead, the Deputy Secretary of State, who represented the State Department at the meeting, argued against a charge of "material breach," espousing the views of Paul H. Nitze, the arms control adviser to Secretary of State George Schultz and Max M. Kampelman, the chief United States arms negotiator, who also attended the meeting.

Gen. Robert T. Herres, the vice chairman of the Joint Chiefs of Staff, is also said to have opposed the idea of charging a material breach.

"The Chiefs understand where the S.D.I. program is really at right now and they do not believe it is in our interest to undercut the ABM treaty at this time," a senior Administration official said, referring to the Strategic Defense Initiative, or "Stars Wars."

William F. Burns, the director of the Arms Control and Disarmament Agency, positioned himself somewhere in the middle, though he reportedly leaned toward the hard-line view. He is said to have advocated that Soviet officials be warned at the review meeting that the radar would be declared a "material breach" unless Moscow took some type of corrective action soon.

Mr. Burns is said to take the view that the Administration should not lodge a charge of "material breach" unless it has a clear idea of what action it would take in response.

Mr. KENNEDY. Mr. President, I rise to support this resolution urging the President to continue his efforts to seek the dismantlement of the Soviet radar at Krasnoyarsk. That radar is an unequivocal violation of the 1972 ABM Treaty and must be corrected.

The President, however, should seek to resolve the Krasnoyarsk violation in a manner that reinforces the ABM Treaty regime and contributes to further progress in arms control. In particular, he should avoid steps that would move toward suspending or terminating U.S. adherence to the treaty. As the Joint Chiefs of Staff have recently advised, the treaty continues to contribute significantly to our security by limiting Soviet strategic defenses.

These points have been elaborated upon in a recent letter that 42 Senators including myself sent to the President on the subject of the ABM Treaty. I ask that this letter be included as part of the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, August 11, 1988.

President RONALD REAGAN,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As you approach the third five-year review of the 1972 Anti-Ballistic Missile (ABM) Treaty, we want to reaffirm our support for efforts to strengthen the treaty and ensure its continued contribution to our national security. In this regard, we are encouraged by your recent decision not to move at this time toward suspension or termination of U.S. obligations under the ABM treaty by declaring Soviet construction of the Krasnoyarsk radar a material breach of the treaty.

We strongly believe that Soviet violations of arms agreements can neither be excused nor ignored. As you know, the Senate went on record in February and in September 1987 declaring the Krasnoyarsk radar an unequivocal violation of the ABM Treaty and calling for the Soviet Union to dismantle it. We also are fully supportive of your position that no START agreement can be completed until the Krasnoyarsk radar issue is resolved to U.S. satisfaction.

However, it would be premature and counterproductive to move toward suspending or terminating U.S. adherence to the ABM Treaty in response to the Krasnoyarsk radar. The radar, although a serious violation, remains years from completion and thus poses no immediate threat to the United States. Moreover, the moratorium on construction of the radar that Soviet General Secretary Gorbachev announced last October suggests a Soviet willingness to discuss the radar's dismantlement. The recent statements by Soviet arms control official Viktor Karpov also appear to contain some encouraging signs on the Krasnoyarsk radar. We urge you to pursue these apparent openings at the ABM Treaty review this month in a manner that strengthens the treaty and reaffirms the obligations of both parties to abide by its terms.

We firmly believe that the ABM Treaty continues to contribute significantly to U.S. and NATO security by limiting Soviet strategic defenses. We understand that this view of the treaty's value to our national security is shared by the Joint Chiefs of Staff.

We urge you to continue to reject any course of action that could lead to suspension or termination of the treaty provisions. In the short run, such a course of action could cause us to miss an opportunity to settle the Krasnoyarsk radar problem through negotiation. In the longer run, it could undermine the treaty itself. As the first missiles are being destroyed under the recently ratified INF Treaty and the START negotiations are making steady progress, this is not the time to reverse course on arms control by stepping back from U.S. obligations under the ABM Treaty.

We look forward to working with you to resolve the question of the Krasnoyarsk radar in a practical and effective manner that reinforces the ABM Treaty regime and contributes to further progress in arms control.

Sincerely,

Edward M. Kennedy, John H. Chafee, Dale Bumpers, Robert T. Stafford, J. Bennett Johnston, Claiborne Pell, Jeff Bingaman, Alan Cranston, George J. Mitchell, Daniel K. Inouye, Albert Gore, Jr., Patrick J. Leahy, Terry Sanford, Brock Adams.

Timothy E. Wirth, John F. Kerry, Spark M. Matsunaga, William Proxmire, Donald W. Riegle, Jr., Paul Simon, Mark Hatfield, Daniel J. Evans, Frank R. Lautenberg, Jim Sasser, Christopher Dodd, Tom Harkin, John D. Rockefeller IV, Quentin Burdick.

Paul Sarbanes, Carl Levin, Daniel P. Moynihan, Wyche Fowler, Jr., Lawton Chiles, David Pryor, Dave Durenberger, Howard M. Metzenbaum, Barbara A. Mikulski, John Glenn, John Melcher, Max Baucus, Thomas Daschle, Wendell Ford.

Mr. LUGAR. Mr. President, I am a cosponsor and strong supporter of this resolution, and I want to commend the Senator from Wyoming for the constructive way in which he has negotiated the language of this resolution.

He has negotiated with the executive branch on this language in a most constructive fashion. He has negotiated the language of the resolution with his colleagues in the Senate and has displayed great willingness to take any concerns into account.

Mr. President, with all of the emphasis on the specific language of the resolution, let us not lose sight of the basic purpose of the resolution. It is to add the Senate's voice to that of the administration in saying to the Soviet Union that the Krasnoyarsk radar is an "unequivocal violation" of the ABM Treaty, that it is an obstacle to any future arms control argreements, and that the Soviet Union would be naive to believe that agreements in the START and defense space areas were possible without correction of its violation of the ABM Treaty.

Moreover, Mr. President, I want to call Members' attention to the second provision of the resolution wherein the Senate calls upon the President to work with it in developing appropriate and proportionate response options to Soviet violation of the ABM Treaty which, if not corrected, deny us the essential benefits of the ABM Treaty. Mr. President, we have debated the whole compliance question on many occasions in the Senate, and indeed, some of our colleagues have even tried to legislate appropriate and proportionate responses to Soviet violations. This current resolution urges the President to consult with and involve the Senate in the formulation of any such response options.

Last, Mr. President, let me remind my colleagues where we stand on this issue. The President decided not to declare the Krasnoyarsk radar a "material breach" of the ABM Treaty prior to the ABM Treaty Review Conference. While the Soviet Union gave no assurance at the Review Conference that it was prepared fully and without condition to correct its violation of the ABM Treaty, its delegates to the conference did indicate informally a willingness to look for means to resolve the impasse.

Several of us met with General Burns, the Director of ACDA, last Monday to discuss the outcome of the ABM Review Conference. General Burns then left to brief our NATO allies. The Soviet Foreign Minister will be meeting with Secretary Shultz next week. It seems safe to say that the ABM Treaty will be on their agenda. The Senate can play a most constructive role prior to those meetings by adding its voice to that of the administration in saying: "Soviet violation of the ABM Treaty must be corrected."

Mr. President, this resolution does not ask the Senate to take a position on the material breach issue. It does not call on anyone to scrap the ABM Treaty. It simply says to the Soviet Union: "Let us disabuse you of the notion that you can have your cake and eat it too."

I would urge overwhelming Senate support for this resolution.

Mr. LEVIN. Mr. President, the Senate has already made quite clear our concern about the Soviet Union's violation of the ABM Treaty through its construction of the Krasnoyarsk radar. This resolution seeks to take that concern one step further, and to insist that the radar be dismantled before any future strategic arms control agreement is concluded. I think it is clear without the Senate having to pass this resolution that without an end to the Krasnoyarsk violation, it would seem impossible for the United States to reach final agreement on other arms control issues. I think it is also important to point out that not only has the Reagan-Bush administration already made this linkage, but also Gov. Michael Dukakis has stated his determination to bring about dismantlement of this radar as a necessary precursor to finalizing any new agreements on strategic arms.

Furthermore, the situation is not so bleak as some might have us believe. Contrary to the resolution's implication that the Soviet Union is completely stonewalling United States efforts to resolve this issue, I would note that the Soviets have made a number of suggestions about steps they might take on the Krasnoyarsk question. These steps have included the possibility of dismantlement, although they have thus far refused to consider this action without some simultaneous actions by the United States which we have been unwilling to take. As the majority leader himself noted, the Soviets also broached another proposal as recently as this week. I hope these signs indicate that a resolution of this dispute is not impossible.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the resolution.

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD. I announce that the Senator form Washington [Mr. ADAMS], the Senator from Texas [Mr. BENTSEN], the Senator from Florida [Mr. CHILES], the Senator from California [Mr. CRANSTON], the Senator from Tennessee [Mr. GORE], the Senator from Vermont [Mr. LEAHY], and the Senator from Nevada [Mr. REID] are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE], would vote "yea."

Mr. SIMPSON. I announce that the Senator from Maine [Mr. COHEN], the Senator from Texas [Mr. GRAMM], the Senator from Oregon [Mr. HATFIELD], the Senator from Nevada [Mr. HECHT], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Nebraska [Mr. KARNES], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Indiana [Mr. QUAYLE], the Senator from Delaware [Mr. ROTH], the Senator from New Hampshire [Mr. RUDMAN], the Senator from

Alaska [Mr. STEVENS], and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska [Mr. KARNES] would vote "yea."

The PRESIDING OFFICER (Mr. DASCHLE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 81, nays 0, as follows:

[Rollcall Vote No. 331 Leg.]

YEAS—81

Armstrong	Fowler	Mitchell
Baucus	Garn	Moynihan
Biden	Glenn	Nickles
Bingaman	Graham	Nunn
Bond	Grassley	Packwood
Boren	Harkin	Pell
Boschwitz	Hatch	Pressler
Bradley	Heflin	Proxmire
Breaux	Heinz	Pryor
Bumpers	Helms	Riegle
Burdick	Hollings	Rockefeller
Byrd	Inouye	Sanford
Chafee	Johnston	Sarbanes
Cochran	Kassebaum	Sasser
Conrad	Kasten	Shelby
D'Amato	Kennedy	Simon
Danforth	Kerry	Simpson
Daschle	Lautenberg	Specter
DeConcini	Levin	Stafford
Dixon	Lugar	Stennis
Dodd	Matsunaga	Symms
Dole	McCain	Thurmond
Domenici	McClure	Trible
Durenberger	McConnell	Wallop
Evans	Melcher	Warner
Exon	Metzenbaum	Wilson
Ford	Mikulski	Wirth

NAYS—0

NOT VOTING—19

Adams	Hatfield	Reid
Bentsen	Hecht	Roth
Chiles	Humphrey	Rudman
Cohen	Karnes	Stevens
Cranston	Leahy	Weicker
Gore	Murkowski	
Gramm	Quayle	

So the resolution (S. Res. 474) was agreed to.

The preamble was agreed to.

The resolution with its preamble is as follows:

S. RES. 474

Whereas the Representatives of the United States and the Union of Soviet Socialist Republics met in Geneva, Switzerland from August 24 to August 31 to conduct the third five-year review of the ABM Treaty as required by the provisions of that agreement;

Whereas the United States raised again its concerns about Soviet activities in actual or possible violation of the terms of the ABM Treaty, including but not limited to, the radar violations located at Krasnoyarsk and Gomel;

Whereas violations of arms control agreements damage the relations between the parties and undermine the integrity of the arms control process;

Whereas the Senate unanimously supported by a vote of 89-0 in Sec. 902 of the FY1988/89 Department of Defense Authorization bill the President's position that the Krasnoyarsk radar is an "unequivocal violation" of the ABM Treaty and declared in S. Res. 94 by a vote of 93-2 that it represents an "important obstacle" to any future arms control agreements;

Whereas the Soviet Union gave no assurance at the Review Conference that it was prepared fully and without condition to correct its violations of the ABM Treaty, including the Krasnoyarsk radar;

Whereas the United States has made clear, in its unilateral statement of August 31, 1988 at the end of the ABM Treaty Review Conference, that "until the Krasnoyarsk radar is dismantled, it will continue to raise the issue of material breach and proportionate responses;"

Whereas, in that statement, the United States also made clear that "the continuing existence of the Krasnoyarsk radar makes it impossible to conclude any future arms agreements in the START or Defense and Space areas.": Now, therefore, be it

Resolved, That it is the sense of the Senate that the Senate:

(1) Strongly supports the continuation of settled national policy, reiterated in the August 31 unilateral statement, that unequivocal Soviet violations of the ABM Treaty, as exemplified by the radar at Krasnoyarsk, must be corrected before the conclusion of any future agreements on strategic arms.

(2) Urges the President to work with the Congress to develop appropriate, proportionate response options to the Krasnoyarsk radar and any other unequivocal ABM Treaty violations that would, if not corrected, deny us the essential benefits of the treaty and be detrimental to U.S. security.

(3) Expresses its willingness to consider as soon as possible any such responses that might require legislative action.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MINIMUM WAGE RESTORATION ACT

The Senate continued with consideration of the bill.

Mr. KENNEDY. Mr. President, just for the benefit of the membership, we have the Hatch amendment. I have a perfecting amendment. We are all prepared to move ahead and vote on that.

The Senator from Iowa has an amendment, and the Senator from Illinois has an amendment. We are prepared to deal with those forthwith and to move on. I think there are one or two other areas that have been indicated to us.

That is our position. Unless there is going to be some other disposition by those who are opposed to the minimum wage, we are quite prepared to move ahead.

I will yield the floor now. I know the Senator from New Mexico has been wanting to speak in support of this proposal.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I rise to support the legislation to require an increase in the Federal minimum wage. Raising the minimum wage is important to thousands of American workers attempting to provide for themselves and their families. The minimum wage is now $3.35, a rate which was set in 1981. Today at this level, the minimum wage has lost one-fourth of its purchasing power due to inflation since 1981.

While the minimum wage's purchasing power has fluctuated considerably over time, it is less today than at any time since the mid-1950's. A full-time worker paid $3.35 an hour earns less than $7,000 a year, well below the $11,611 poverty line for a family of four.

A decline in the real purchasing power of the minimum wage has created a disturbing paradox. At today's level, in over half the States, someone working full time at minimum wage would earn less than if they had gone on welfare. If we truly want to create incentives to get people off welfare, then we must provide them with good jobs at a livable wage.

As well as falling behind in purchasing power, the minimum wage also has fallen as a share of wages. After hovering around 50 percent of average hourly earnings in private nonagricultural industries during the 1950's and 1960's, the minimum wage averaged just over 45 percent in the 1970's. By 1985, it had declined to about 39 percent of average wages in this country.

This bill restores fairness and effectiveness to our minimum wage policy by increasing the Federal minimum wage in a gradual way from $3.35 per hour to $3.75 per hour in 1989 and to $4.15 per hour in 1990. After January 1, 1991, the minimum wage would be set at not less than $4.55 per hour.

This incremental increase should not impose an undue hardship on employers. The benefits of increasing the minimum wage far outweigh the disadvantages, in my opinion. The increase will help a great number of working men and women in New Mexico and elsewhere. According to New Mexico's Department of Labor, there are an estimated 108,000 New Mexico citizens who will benefit from this legislation.

A substantial sector of New Mexico's economy is service oriented and, as you know, this is the area where a great many positions pay the minimum wage. Additionally, this increase in minimum wage will positively benefit the farm workers in New Mexico.

There is concern that a minimum wage increase would lay an inequitable burden on business, but history has proven otherwise. An increase in the minimum wage is not an entirely new phenomenon for American business. The minimum wage was raised in 1949, 1955, 1963, 1967, 1974, and then stepwise between 1977 and 1981. Each time numerous business organizations and economists strongly opposed the move, yet it is apparent from the employment data that the adverse consequences which were predicted each time never came to pass.

Critics of the legislation claim that an increase in the minimum wage will hurt youth employment and do little to help the working poor. In my view that is incorrect. In the United States it is estimated that 69 percent of workers earning less than the 4.55 per hour are adults over 20 years of age, while only about 31 percent are youth.

Further, about 63 percent are female and only 37 percent male.

Clearly it is the working poor, especially working mothers, who are earning the minimum wage, not the stereotypical middle-class teenager with a summer or an after-school job.

Mr. President, the problem of the working poor is a serious one in our country. Many people hold the mistaken view that all the poor are on welfare and not working. That is incorrect. In New Mexico alone, 20,000 of the 47,000 families below the poverty level can be classified as working poor with at least the head of household employed. Nationally, almost half of the households below the poverty line are working poor.

Almost 5.5 million households where one, two, three, four, or even more members of the household are wage earners, cannot break out above the poverty line. In fact, there are almost 1.3 million households in this country where two people work simply to attain the mean income of about $6,300 per year.

I challenge any of my colleagues to live on $6,300 per year, let alone be forced to need two wage earners in the family just to have a $6,300 a year income.

There are over 7 million American workers today living below the poverty level, people who are working hard but are finding the difficulty to make ends meet.

The plight of the working poor is also acute in my home State of New Mexico. Over 225,000 New Mexicans who are either employed or looking for a job are living at or below the poverty level today. That is almost a third of the State's civilian work force that is living close to or below the poverty line.

Based on these statistics, it is imperative that we understand the connection between the increase in the minimum wage and the need to protect the working poor. The minimum wage is the bulwark of protection for the working poor, especially for working single mothers.

Mr. President, fairness and equity dictate that we protect our workers from laboring for poverty wages and this legislation helps ensure that protection. I am very pleased to support it. I urge my colleagues to do so as well.

I yield the floor.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, earlier during the day in the general discussion on the minimum wage there were a number of references about what impact the increase was going to have on the condition of low-wage earners in our society. I would like to just take a few moments this afternoon to present to the Senate some description of what our hearings have revealed, of what the various studies have shown.

We have tried, over the course of the debate on this issue, to address the questions of unemployment, also the questions of inflation. We will comment in later debate about the impact on the general economic condition, although we have had reference to that. And, as I have stated previously, I think rather than taking what are the representations of those of us who favor an increase in the minimum wage and those who are opposed, it is best really to look at the record of what has happened the last six times we have raised the minimum wage, both on employment, youth unemployment, total employment, and what has been the impact in terms of inflation.

I think, as I pointed out earlier during the debate, that those warnings, those conclusions which have been made by those who have been opposed to an increase in the minimum wage from the time that we first passed it some 50 years ago, those arguments have not been proven to be historically accurate on the questions of the amounts of unemployment increases and the inflation increase.

But, today, earlier during the course of the discussion, by statements made by the Senators of Utah and Texas, they talked about the impact of the minimum wage on poverty and I would like to just address that issue for a brief time here this afternoon.

I know a number of our colleagues will be, hopefully, reviewing the RECORD on those different elements and when we come, hopefully, to a final resolution on this issue in the early part of next week, we will have addressed the points that have been raised by those who oppose the minimum wage.

I noticed earlier today that Vice President BUSH was asked once again about his position. He had indicated that he is for an increase in the minimum wage, although when he was asked what the increase would be, he was unwilling to indicate what he would actually support. I find that somewhat interesting since this is an issue that has been discussed and debated; we all know what the implications are of the various increases. And not to be willing to at least indicate what kind of increase he would support, I think, certainly must be troublesome—it should be to those who have been left out and left behind by the failure of Congress to act in increasing the minimum wage.

Some have suggested that he would go up to some $4 an hour. I have addressed that proposal where that actually would be a reduction in the purchasing power of the minimum wage over what it was at the time when this administration took office. But I am sure we will have a chance to come back and debate that particular issue. Now for the issue of the minimum wage and poverty.

A vote to increase the minimum wage is really a vote against poverty. Make no mistake: this bill will improve the lives of 70 percent of the hourly workers from families of three who are caught in the desperation and indignity of poverty. We are talking about 2.6 million workers, from families earning less than the poverty level for a family of three who will receive a badly needed raise if this bill is passed.

Over the course of the debate, we heard from our friend from Utah and others about the fact that some 15 or 16 million new jobs have been created and how they are paying $10, $6 an hour. Actually, what we are talking about is only a few percentage points that are actually in the minimum wage.

Those represent 2.6 million workers; 2.6 million of our fellow citizens; 2.6 million mothers and fathers—they have children—who are working and who want to work. That can be dismissed as a small percentage in terms of the total work force, but no one who hears from any of those families and who looks into the eyes of any of those witnesses who testified before our committee, proud Americans who want to be a part of the whole American dream and are trying to provide for themselves and for their children, can dismiss the fact that there are the 2.6 million workers from families earning less than the poverty level for a family of three who will receive a badly needed wage increase if this bill is passed.

Mr. President, 2.6 million low-income workers, Americans who are out there trying to avoid the plague of welfare recipiency, Americans who deserve more for their backbreaking work than poverty and depivation.

A staggering number, 2.6 million. To hear the administration and the opponents of this bill tell it, you would think 2.6 million is statistically irrelevant. But 2.6 million is only the tip of the iceberg.

The 2.3 million more workers who hover near poverty would also be assisted by this bill. Almost 5 million very-low-income workers will get a raise when this bill is passed. The opposition says that this bill does nothing for people in poverty.

Let us be clear, life at or even near that poverty level is no picnic. In fact, it is close to impossible. The poverty level for a family of three is currently $9,300 a year. I hope the opponents of this bill are listening closely—$9,300 a year. That is $179 a week for food, shelter, clothing, medical care, and education. I do not know how one person survives on that salary, let alone two adults and a child. But the fact is that 2.6 million low-wage workers and their families are living below that level. Three million five hundred thousand workers and their families who will be affected by this bill earn less than $11,000 a year, less than the Federal poverty level for a family of four. Four million nine hundred thousand American workers and their families who live on less than $15,000 a year will get some relief under the proposed legislation. Will any Senator in the Chamber rise to tell me it is easy to raise a family on $15,000 a year? I do not think so.

The raise offered in this bill could mean being able to serve meat at dinner more often. It could mean being able to afford to buy a dictionary so the children can do their homework. It could mean being able to afford a visit to the dentist.

How can the opponents of this bill deny these basic necessities to families fighting to stay off of welfare? The answer is that the opponents of this bill do not care about the poor families and their children. All they care about are the larger profits and the bigger businesses. I say, enough. It is time that we put the interests of the most vulnerable American first.

And let us talk for a minute about welfare dependency. Lately we have considered some important acts in the Senate aimed at reducing welfare dependency through job training. These bills are essential, but they are not enough. The overwhelming majority of welfare recipients would rather work. But when working means subpoverty wages; when working means life without health insurance; when working means leaving young children home unsupervised; when working means all of these things, responsible American parents cannot choose work, even though they want to. Increasing the minimum wage is the first step toward reforming welfare with work. Many more Americans will choose to work if working means a living wage—not living in jeopardy.

To hear those opposing this bill tell it, you would think that the overwhelming majority of minimum wage earners are rich teenagers working in the summer or after school to be able to afford a new bike. It is time to look at the facts and to get to the bottom of the disinformation campaign that has been waged against this bill:

First, the majority of workers who will be affected by this bill are not teenagers. Seventy-four percent of those workers who will be affected are 20 years of age or above. Almost 50 percent are older than 25.

Some 15 percent of workers in this low wage work force are black, 8 percent are Hispanic. Both of these subpopulations are represented in the low wage work force in numbers far exceeding their representation in the overall work force; 63 percent of these low wage workers are women, many of them working to support or help to support their children.

These low wage workers are not teenagers in summer jobs—almost half of all low wage workers work full time, many more would prefer to work full-time but child care duties and the availability of full time positions restrict their options.

Finally, I have a question for the Senate: 26 percent of these low wage earners are teens. Is that a reason to oppose the minimum wage? No. Even the question is ridiculous. Many of these teenagers are poor and are working to help support their families or maybe they are supporting families of their own.

Some of these teenagers are not poor, but they may be middle income high school students working to earn money for college. All of us know that the costs of college are now astronomical—private college tuition costs have increased by 71 percent, public college costs by 63 percent and the rate of borrowing for higher education has increased by 40 percent. Are we going to begrudge the enterprising teenagers and youth who are working for tuition money a little boost in their quest for higher education?

Mr. President, I am simply tired of the opponents of this bill twisting the facts to keep hard working men and women from getting a raise. I say that it is time that the Senate do something for those Americans who have not benefited from the economic recovery. It is time to share the prosperity of the 1980's with the hard working men and women who made it happen, and haven't felt its effect.

We have heard a good deal about the prosperity that has taken place in our society over the period of these recent years. No one questions that for the top third income Americans have done very well and particularly if they have been on the east coast or the west coast. But to those who have been the working poor, those whose lives will be affected by this legislation, they have no cost-of-living increase as other groups in our society have. We find they have by and large been left out and left behind.

The other third, middle America, are barely able to hold on by their fingernails in affording their mortgage payments, in educating their children, in paying the increasing health care costs—many of the jobs that the newer members of the families have acquired are those without any kind of health coverage at all—increasing payments in terms of day care.

Mr. President, they are barely able to hold on in our society. They are proud Americans and we respect them.

I just wonder why this body is so reluctant—I do not believe it is, but there are Members in this body who are so reluctant to ensure that those who do the most menial jobs in our society and continue to work rather than be on public assistance, why those 16 million Americans should not be entitled to the cost-of-living adjustment. That is what we are talking about. Not a pay increase, but a cost-of-living adjustment. That is the issue, and those, as I have described, who are living in poverty, the working poor, are the ones who need this relief. I hope that we would move to ensure that they will receive some.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER (Mr. GLENN). The Senator from Montana.

Mr. MELCHER. Mr. President, this is the third time since I have been a Member of Congress that we have approached this problem of restoring some purchasing power to the lowest paid people in America. The minimum wage is about 50 years old. It was first enacted in 1938, so it has been around for a long time. The idea in 1938 was to establish a Federal minimum wage that was roughly half of the average hourly wage of Americans. From time to time since then it has had to be increased. The last time we did it was in 1981, when it reached the $3.35 per hour figure. We are measuring in 1988 that that is about 36 percent of the average hourly wage in America. It is statistically said that somewhere between 15 million and 16 million Americans who are working are paid at the minimum wage. So for those 15 million or 16 million Americans, there is not any question that since 1981, when they reached $3.35 per hour, their purchasing power has been considerably down.

It is true, as the Senator from Massachusetts has just said, the central issue is should there be a cost-of-living adjustment for the people who are at the minimum wage. I think the answer is yes, it is time to do that.

This bill will not restore what is the historic goal of the minimum wage, to reach 50 percent of the average hourly wage of all American workers, but it will start to catch up. That is the im-

portant point. We should start to catch up in purchasing power.

Let us take a look at it. We are at 36 percent now. In the first year under the terms of this bill, in 1989, we will be at roughly 40 percent of the hourly wage, the second year 43 percent. That will be 1990. It will be at 43 percent of what is projected to be 50 percent of the average wage of all Americans. And in the third year 46 percent. So what we are doing for 15 million or 16 million American workers at the lowest pay is to provide a cost-of-living increase so they can regain purchasing power, so they can after the third year get close to 50 percent of what is the hourly wage for all American workers.

Is this the right thing to do? I think, yes, it certainly is the right thing to do.

Well, then, what about the arguments in opposition? I believe there are two key arguments. One argument made by those who oppose the bill is that employment is likely to drop; if you increase the minimum wage, there will be higher unemployment. Well, let us look at the record.

Now, the first enactment was in 1938, as I previously said, and the first time after 1983 that it was increased by Congress was in 1949. It was increased substantially at that time, but unemployment did not go down. Employment went up. So every year that the minimum wage has been increased, in 1949, 1955 during the Eisenhower years, 1961, 1966, 1974, and 1977, in each of those 6 years after the minimum wage was raised by actions taken in Congress, employment did not go down; employment went up—unemployment went down. So I do not believe that is a very valid argument against raising the wage now.

There is a second pertinent argument that is raised against increasing the minimum wage and that is that it will have an inflationary impact.

The Congressional Budget Office has summarized the Minimum Wage Study Commission report and Dr. F. Gerald Adams' contribution thereto. The argument is that an inflationary impact will result, and for those who make that argument they generally assume that there will be a two-tenths of 1 percent or three-tenths of 1 percent increase in inflation due to increasing the minimum wage. The Congressional Budget Office in summarizing the Minimum Wage Study Commission report has stated that they simply do not agree. They think that a two-tenths or three-tenths of 1 percent inflationary factor per year because of raising the minimum wage is simply too high an estimate. Why? Because the proportion of minimum wage workers is declining, and therefore they refute this rather small inflationary factor that is assumed by the opponents of this bill.

When it all boils down, we generally like to know what the people think before we vote. What do the people of this country think? It is interesting to me that Dr. Gallup conducted a poll on this very question in 1937: What did the public think of a minimum wage? Should Congress establish a minimum wage? 1937 was the year before Congress enacted the first minimum wage. But Americans in 1937 said on the basis of 3 to 2 that they supported a national minimum wage law. Congress enacted it the following year.

Dr. Gallup, in polling Americans this year, again asked the question. He said, "As you may know, Congress is now considering legislation which would gradually raise the minimum wage over the next 3 to 4 years." He cited what it is now, $3.35 per hour, to go up to $5 per hour over the next 4 years. And what were the results? In this national Gallup poll, 76 percent of Americans favored raising it, 20 percent opposed it, and 4 percent were undecided, had no opinion. Seventy-six to twenty, almost a 4-to-1 ratio of Americans said raise it.

What about political parties? Of these typical Americans in this national poll who said yes or no, what were their party affiliations?

Well, of those who said yes, 85 percent of the Democrats that were polled said yes. Maybe people expect that. What about Republicans? Of those polled that were Republicans, 67 percent said yes, 30 percent said no; substantially over 2 to 1 in the party that might be assumed by some to be in opposition of raising the minimum wage. Sixty-seven percent of the Republicans polled said yes, 30 percent said no; independents, 74 percent said yes, 22 percent said no.

What about the age span? Well, in all age categories overwhelmingly ranging from 77 to 78 percent, or 80 percent, said yes.

What was their educational level? From college graduate to not having a high school education, but having a grade school and perhaps some high school, the range was 70 to 78 percent. Eighty percent were on the top end, and those were high school graduates. What about the parts of the country? Well, it did not vary much from east to west; 80 to 74 percent in all parts of the country said yes.

Mr. President, it is an outstanding poll in that overwhelmingly Americans have thought about the question, should the minimum wage be raised, and they have come down overwhelmingly saying yes.

I think that is a tribute to the fairness, the compassion, and the concern of the American people for those American workers who are at the bottom level of the money they receive for their labor, for their efforts, and for their work.

I think that is good guidance to us here in the U.S. Senate and that we, too, should say overwhelmingly in this Senate on this question: "Should the minimum wage be increased to recoup purchasing power for the 15 million to 16 million Americans receiving the lowest amount per hour?"—I think we should say yes overwhelmingly, and I trust that we will.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, my amendment will authorize the youth training a wage, a real training wage, and really an opportunity wage. It has the potential to create hundreds of thousands of new jobs for those who are really the hardest to employ. That potential alone is just occasion for action by Congress, and I am convinced that a meaningful training wage can be a strong weapon in the war against unemployment, and especially unemployment of our unskilled in our society.

Mr. President, youth unemployment is still one of the most serious problems facing America today. Yes, this administration has made headway on youth unemployment. It has come down dramatically but it is still too high. It seems to me if they would take my training wage amendment it would really make a big difference with regard to the young people in this country who are really underskilled, undereducated, and undertrained to take these jobs.

Even though the rate has improved from a situation of several years ago I might add that the unemployment rate is still unacceptable, and should inspire all Members of Congress to embrace my amendment. These percentages however, tell only half the story. They do not explain that people who are unable to find work lose out on valuable experience, on the chance to learn job skills, to obtain job references for the future, and earn self respect as well as income.

The unemployment figures do not point out that when many youth become discouraged, they turn to drugs, alcohol, or juvenile crime. It is a sad thing to see the ambition and talent of our young people in this country wasted, and it is also a sad thing if Congress fails to try to come up with a new solution. My colleague from Massachusetts is just saying the same old thing that we have had in the past.

Last year the Labor Subcommittee held hearings on youth unemployment at which several young people were invited to tell their personal stories. Their testimony moved every one of us on the committee because we knew they were telling us the truth about life on the streets, life with parents who were substance abusers, and life in jail.

These teenagers were not reciting lines from a Hollywood script. One young man in particular seemed desperate to turn his life around. He knew his own weaknesses and limitations. But he was determined to overcome them. All he needed was a chance. He told the committee he would work for $2 an hour if somebody would just plain give him the opportunity. Clearly his self respect was more important to him than the wage.

This is the purpose of the training wage amendment. That is to provide for people who will not get their chance any other way, to provide them with the opportunity to prove themselves, not just to an employer and to society, but to themselves as well. Those who take these opportunities will not be earning low wages for long. In times, they will own the company as many of them have done.

Let me explain the amendment. My amendment is not a complex amendment. First, my amendment would allow any employer to pay 90 percent of the statutory minimum wage for 90 days just by giving the people a chance to work.

Second, the bill contains stiff penalties for any employer who abuses the intent of this legislation by displacing adult workers or youth already employed. These sanctions are an explicit commitment of the Congress, if we enact this amendment, and the administration to ensure compliance with both the letter and spirit of the Fair Labor Standards Act. We have tried many other programs. We have spent billions of dollars on the public sector work programs, yet youth unemployment rates remain unacceptably high.

We have held out these Federal programs to our unemployed youth as though they were money from Heaven, and I do support Federal training programs, although I think there are good training programs and bad training programs. I have been a leading supporter of both the Job Training Partnership Act and the Job Corps, and of course, the CARL PERKINS' vocational education bill. I have faith that these programs have great potential to help both youth and adults who are suffering from structural unemployment.

The record is clear. After years of Federal effort and billions of dollars, the problem of youth unemployment remains critical and acute. Unfortunately, Congress has to figure out how to stretch public dollars for training and employment programs. Our public investment is such programs cannot possibly extend as far as the need.

If our young people are unable to participate in these Federal programs or they cannot find a job paying at least the minimum wage, they are plain out of luck, and they will be on welfare the rest of their lives, and it will probably cost $1 million per person in welfare to the taxpayers.

We know that the minimum wage has a severe, adverse effect on the employment of teenagers. I do not know of any economist worth his salt or any wage analyst or any labor analyst who would not agree with that. It has a devastating effect on teenage unemployment. There is no question about it.

We know that the effect of the minimum wage is to eliminate many jobs which typically provide people with their work experiences.

The pending bill will increase the minimum wage approximately 36 percent over the next 3 years. S. 837 will only compound this national problem as it pushes up the costs, inflation, cost of goods and services, for everybody else. So when they get the minimum wage, we take back in the cost to society as a whole.

When a youth opportunity wage was produced as a bill in 1985 and 1986, it had the enthusiastic support of many diverse groups, including the National Council of Black Mayors, the Boys Clubs of America, the American G.I. Forum, Fraternal Order of Police, and the Chamber of Commerce, to name just a few. That is when the youth opportunity wage was offered, not the minimum wage. These organizations are concerned with creating opportunities for youth. These organizations were frustrated that little was being accomplished and were willing to support a 3-year test of the youth opportunity wage concept, and I agree with them.

If we fail to even test the concept, we will be guilty of failing those young people who would otherwise have had a chance at employment. The economic evidence suggests a training wage is a valid response to this national problem.

I realize that not everyone shares my faith in the market's response to this wage flexibility which others have shown. I say we should find out.

If this measure creates even one new job for an unemployed teenager, giving that young citizen a break in life, it will be worth the effort to enact. What is wrong with trying? Why do we not believe that a youth wage will work? Or, I should say, that some do not believe, because I know it will work, and those who really look at it know it will work. Let us find out. Let us try.

If we take the approach of the Senator from Massachusetts, it really is not much of a change from the present law. It applies only to full-time college students. Frankly, they are people who can get jobs at the minimum wage.

What about the kids born on the wrong side of the tracks, in Ogden, UT, or the ghettos of New York or Boston, Massachusetts, or Pittsburgh, or wherever? Are we just writing them off? The approach of the Senator from Massachusetts does nothing for them, in my opinion, or in the opinion of anybody who looks at it.

The fact is that it does very little to improve upon present law, because all it does is require that they have a certificate, they have to apply for it and go through the bureaucratic rigmarole to get one, and that discourages businesses right there.

No self-respecting businessman really wants to go through the bureaucratic maze in Washington. If they happen to choose to go through that system and they happen to get a certificate, they can get six people now on what is called an opportunity wage. But it is really not an opportunity wage; it is a lesser wage. That would be a true subminimum wage, because the full-time students literally could go out and get the minimum wage if they really wanted to.

The fact is that what we need is a training wage for those who cannot get a chance any other way.

So he would multiply it from 6 persons under a certificate to 12. That is after going through the bureaucratic maze in Washington and go through it every year.

We are suggesting, why not just give this opportunity to anybody who has not worked before? Let them get that original job. Let them have the opportunity to get into a business or into a job.

Mr. KENNEDY. Mr. President, will the Senator yield for a question on that point?

Mr. HATCH. I yield.

Mr. KENNEDY. I have heard the Senator describe his amendment as only being available to people who never worked before, but that is not what the amendment says. It says, "If such employee had not had previous employment by such employer."

So, as I read the amendment, the discription the Senator has just given applies only to a particular employer. An individual who had worked for Burger King could not go down and work for Dunkin' Donut.

I know that our colleagues are making an important judgment about which way to proceed, and I have heard the Senator describe his amendment; but the way I read it it says, under section (a), "If such employee had not been previously employed by such employer," which would refer only to that employer, rather to a

worker who had not had any kind of work experience. Am I correct?

Mr. HATCH. The Senator is correct.

However, we should point out that what the amendment does is to cover all those situations, such as a young person like myself, when I was in college. I worked for a minimum wage, or less, as a custodian. I developed those custodian skills and did that honorably and with a great deal of pride that I was working my way through college.

Then, if I wanted to become a diamond salesman or a student in a jewelry store or wanted to become a fast-food trainee, I really could not get that job at that time. I had to almost beg to get the custodian job at the particular time.

There are a lot of young kids doing that today. Maybe they can get an initial job somewhere, but it does not have them trained for the next job.

However, it is really quibbling to worry about that language; because, if a young person gets a job almost anywhere in our society and works for the 3 months, during which he or she would be at 80 percent of the minimum wage, I submit that very few of those people at that age would have to go to another employer and work for 80 percent of the minimum wage, because they will have had the discipline and experience that comes from working; they will have shown that they can work. Frankly, they will do better.

Let us assume that, even so, the only way they can get the second job, because it is a different business and a different form of work—the only way they can get that second job is at 80 percent of the minimum wage. The fact is that it may be the only job they can get; and if that is the case, it is better for them to work than not to have that opportunity.

I would be happy to consider amending that, but I do not think it is wrong to have it the way it is written. Once they have worked for the minimum wage for a period of time which cannot exceed 3 months, I do not think they will ever go back to the training wage. They will have established that they know how to work, what work is all about, and that they have the discipline for working. I do not see a major problem.

Mr. KENNEDY. I was just trying to get a correct interpretation of the Senator's amendment.

It was described earlier as being available only to employers who are going to employ for the first time. The way the amendment reads now, it says, "If such employee had not been previously employed by such employer." It is a small point.

Mr. HATCH. It is not a big point.

(Mr. BREAUX assumed the chair.)

Mr. KENNEDY. For the reasons that I spoke to earlier in the debate in terms of my own serious reservations abut the approach that has been taken by the Senator from Utah, but that does clarify it.

In effect, it will be available to any employer and any employee as long as that is not the same employee for the same employer.

Mr. HATCH. That is correct.

Mr. KENNEDY. I think that is a distinction not enormously significant, but just in terms of description, I wanted our colleagues to know.

Mr. HATCH. I wanted our colleague to point that out.

To make a long story short, it is not a very significant point because the key here and purpose of real training wage is not to get more full-time college students jobs. They are going to get them anyway. They have the capacity to do it. It is to help these kids that cannot get jobs. It is not just kids. It would be anybody who cannot get a job.

If you cannot get a job because you are underskilled or undereducated or otherwise unfortunate, and there are 2.4 million dropouts alone in this society, then this training wage gives them a chance, and it gives an incentive to small business in this country which provides 50 percent of the jobs of this country. It gives them incentive to give them a chance.

All the approach the Senator from Massachusetts does is give full-time students a chance and that only under very narrow prescribed circumstances. That is already happening. It is not really an improvement on current law except it would move from 6 to 12 those without a certificate. It would certainly not do the job and it certainly does not do it for the group that needs it.

I am sure there are many college students who are happy they have a job anywhere. That proves my point even more.

If full-time college students who have the grade point average and the SAT scores to get into college are willing to work for a training wage percentage of the minimum wage, then how much more willing to work would be those kids who do not have any chance in society?

If the distinguished Senator from Massachusetts is so concerned and compassionate that he will do it for the full-time college students, why is he not doing it for those who cannot help themsleves? Where is the logic in his position? How can anybody in the U.S. Senate vote for this mock training wage except insofar as to get at six more people per certificate.

If it is that important to do it for them, how much more important must it be to do it for those who cannot get a job, those who are not in college, those who do not have the SAT scores, those who are dropouts from high school, those who are being written off by our society, and those who are continuously losing their positions and rights in society because of some of these societal ills.

If it is for full-time college students and we recognize that, why would it not be more important for those who cannot afford it at all, those who cannot get a job at all.

I fail to see the logic on the part of the distinguished Senator from Massachusetts.

I might also say that to make our amendment even more clear, ours is not limited to teenagers. We would provide a training wage for anybody who cannot get a job, anybody. We have 20-year-old dropouts. We have 25-year-old drug addicts. Why should we not be interested in giving them jobs if we can, if this would work? The only argument we use against this is we do not think it will work. Who knows?

The fact is we believe it will work and we believe it is worth the effort.

But if the distinguished Senator from Massachusetts and others, believe that full-time college students ought to have this kind of aid and assistance that they can work for a youth training wage, then, my goodness, why can we not do it for those who cannot get a job? If the argument is, well, we are trying to help the universities, OK, that is a fair argument. Then why do we not try to help small business people all over this country? Is that not more fair?

Why do we pick on them. We recognize the colleges and universities where it cost $15,000, $16,000, $17,000 a year for tuition?

I want to help the full-time college students. I do not see anything wrong with that. The current law does. I think it is a great thing that the distinguished Senator is willing to move it from 6 to 12 people per certificate. But, my gosh, where is the compassion for those who do not have anything, who do not have a chance, who cannot get a chance?

Let us go beyond them. Where is the compassion to small business people in this country who cannot get enough people to work for them and cannot afford to hire them because they are unskilled? They do not want to go to this market because they are unskilled and if they paid a minimum wage or higher they are never going to hire them. They will just do without or they will go out of business, which many of them have.

It is precisely this kind of legislation supported by those on this other side that really causes small business to go out of business.

To me I will never understand the logic of giving it to the full-time college students but not to those who never have a chance, to those who never will have a chance.

What about the taxpayers of the country? Talking about inflation, what this bill does to inflation? How many of you do want to go back—remember three times the minimum wage changed in the late seventies and we wound up with inflation in double digits. I am not saying just the minimum wage. There were a lot of other things that was done by the prior administration that shot up inflation in double digits, and I might add the prior administration to that, a lot of things.

But the minimum wage was one of those things that pushed it up, and it was changed three times during that period of time. It went upward like that and so did inflation every time and the bottom fell out on youth employment. That went down, especially minority youth employment and especially employment for women, some of the hardest-hit in our society.

For the life of me I will never understand how we can take care of full-time college students and cannot take care of those who, if they stay on welfare all of their lives, it will cost the taxpayer $1 million per person. To me it is a small price to pay to have a real training wage that gives them a break, that gets them into the system, that helps them along the line, that gives them the helping hand instead of a handout that seems to be the philosophy around this great body, getting a handout, rather, a helping hand. I would rather give them a helping hand.

This would do it. You are not only helping those deprived and those undereducated, underskilled and underserved. You are helping the small business people who will be willing to take some chances to hire them. To me it makes so much sense, it makes so much sense.

Senator KENNEDY made the point that under his approach, if they apply for this exemption and this certificate and the Department of Labor decides to give it to them, they can move up from 6 to 12, and, if they can apply for more, maybe they will do more. But the problem is what he does not tell is they have to prove that they do not discriminate against any other employees, and that is an impossible thing to do, so you are limited to between 6 and 12 employees that you might be able to pay a youth training wage for, and they are limited to full-time students.

I do not see why we cannot try this approach, I don't see why we have to stick to the same old, tired solutions. This is an idea that deserves to be tried, I hope my colleagues will join me in opposing Senator KENNEDY's second degree amendment and support a meaningful, substantive training wage that will provide real opportunities.

Mr. D'AMATO. Mr. President, I wonder if my colleague from Utah will yield for a question?

Mr. HATCH. I am delighted to yield.

Mr. D'AMATO. I have been somewhat reluctant to take a position on the minimum wage legislation because there are so many nuances.

Mr. HATCH. That is very well said.

Mr. D'AMATO. I would hope that we could attempt to focus on the facts as opposed to a lot of the rhetoric that goes on—you know, the chest beating about fairness and taking care of those who are most in need. I think we are all concerned with employment and employment opportunity. But maybe for this Senator's edification the Senator might address himself to specifically how long this training would be—it is a training wage—if I were to run a business. I have a constituent who called me today. His name is Mr. Tumminillo. He said he hires mostly students and housewives on a part-time basis. He said generally after they work out, after 3 or 4 weeks, he moves them up and gives them a higher wage.

Now, in your legislation, how would this affect Mr. Tumminillo if there were a $3.75 an hour minimum? I would imagine in the first year, in the bill as proposed now that you seek to amend, it would require raising the minimum from $3.35 to $3.75. What would be the situation with Mr. Tumminillo?

Mr. HATCH. Well, if somebody was first hired in his business, he could hire them at 80 percent of the then prevailing minimum wage. If it was $3.75, it would be 80 percent of that, so long as the base wage he pays is not below $3.35 an hour, the present minimum wage. He would be able to pay them that for 3 months, during which time he would train them.

Mr. D'AMATO. So, in other words, the present minimum would be the minimum?

Mr. HATCH. Not necessarily. You cannot go below the present minimum. Normally, it would be 80 percent of the prevailing minimum wage, as long as it does not go below the present minimum wage.

Mr. D'AMATO. But in no case below the present minimum wage?

Mr. HATCH. That is right. So he would be paying at least the present minimum wage or 80 percent, whichever is higher.

Mr. D'AMATO. And for how long? Would they have to take this as long as he wanted to pay them that?

Mr. HATCH. No, only for 3 months. Then I doubt seriously that many employers would keep them on it for 3 months. Some would, some would not. But they would have a 3-month training wage, and thereafter, they would have to pay the minimum wage.

Mr. D'AMATO. So your amendment would say that at the end of 3 months——

Mr. HATCH. They would have to be paid the then prevailing minimum wage.

Mr. D'AMATO. They would then go up to $3.75.

Mr. HATCH. Sure, whatever it is.

Mr. D'AMATO. Now, I have received many letters and telegrams. I hope to begin placing these in the RECORD this Monday, because I think we should hear from the small business entrepreneurs of America; people who love this country every bit as much as those of us on this floor; and people who are out there in the real work force who understand the realities of what is taking place. They have indicated that, in many cases, they feel that simply to put them in a situation that would require this kind of increase without providing a training wage, would not allow them to hire nearly as many people.

Has the Senator had any experiences or has he received any communications from people in the business community and others who are concerned about giving employment opportunities to young people?

Mr. HATCH. Thousands of them. In fact, I have met with groups all over the country that said if we could just have a training wage, we could do an awful lot of good.

Mr. D'AMATO. But, again, in 90 days—I just want to go over this again—in 90 days, Mr. Tumminillo, or anybody else, would be required then to pay the minimum wage, whatever it is?

Mr. HATCH. No question; whatever it is. Whatever it is, that is right.

In other words, it is not a prolonged thing. It would be required. Once that young person, or older person under our amendment—anybody who has not worked before for that business—once that person has been there 3 months, I think that person will merit the minimum wage and probably be paid more. Certainly they will go up to the minimum wage and I think will go on from there because they will have had the experience of working. They will have had the opportunity to work.

Mr. D'AMATO. I refer to another businessman who called us. He said that without the training wage for new workers, he would have to find ways to hire fewer people, given the increased costs. Now, we are talking about a fast-food place. He said he would find ways to install french fry machines to replace kitchen help. He would install self-service machines for sodas instead of hiring counter helpers. Overall, he makes an estimate that he would reduce his kitchen staff from 25 people to 15 people.

Now, I am concerned about those 10 people who would lose employment opportunities and where they will go if this takes place.

Mr. HATCH. Well, so am I. If the minimum wage goes up, you can count on that happening and happening all over America. Because small business people who operate on very thin margins, in most cases, they are just going to find ways to reduce the labor costs and they will either automate or try to get people to work harder and work harder themselves and do a lot of the work that they would normally pay people for, or they will go out of business.

Now, if those 10 people who are reduced from his restaurant business, from 25 to 15, if those people will go on welfare, guess who pays for that, too? Now, how can anybody think that this is not an inflationary push upward? Because that falls back on all of the taxpayers of America. And you can count on $10 million being spend over the average lifetime of those 10 people—a $10 million cost to the taxpayers that they would not have to pay if those people were working and paying taxes themselves. Although, at minimum wage levels, probably not very much in taxes, but at least paying their way.

Mr. D'AMATO. I have to say to the Senator from Utah that I believe that the minimum wage should be increased.

The Senator from Utah is not opposed to that, is he?

Mr. HATCH. I will put it this way: I really do not believe that minimum wage increases benefit anybody. I believe employers are going to be so hard-pressed to get quality employees in the future that the minimum wage is a fiction that nobody is going to pay any attention to. Already a lot of the fast-food chains, in order to just get employees, are paying much more than the minimum wage.

Mr. D'AMATO. As matter of fact, in some of the regions in my State, people are paying well above the minimum wage.

Mr. HATCH. Well above it, and almost everywhere else.

Mr. D'AMATO. $5, $6, even $7 an hour.

Mr. HATCH. That is right; and almost everywhere else.

Mr. D'AMATO. So is the Senator concerned about that first-time employee that youngster with no training, with no educational skills, with no hope of a job opportunity, with no hope even to get that $7 or $6 or $5 or $4 an hour. Yet if he or she gets that opportunity for 30 days or 60 days or, at the most, 90 days, this youngster may begin to acquire some job skills that they might not get if employers have to pay them this higher wage?

Mr. HATCH. That is what the whole battle is about.

The minimum wage is a fiction today. The laboring force is going down, as far as numbers. Women are going to have to come into the laboring force. The fact of the matter is it is going to be very difficult to get quality employees.

Today, many of our young people—we have 2.4 million dropouts in our society, many of whom will never work again unless we find some way of getting them into the system. Most small business people are not going to hire them at $3.75 minimum wage. They are just not going to do it.

Mr. D'AMATO. Particularly those who have limited language skills, limited education and who need that opportunity, that first start.

The Senator is concerned about higher wage levels limiting them from even entering a job market?

Mr. HATCH. Absolutely; no question. They will not even get a chance to get a job because the employers, as you say in the examples you gave of your constituents, are going to be lowering the total number of employees and they are not going to take the chance to give some of these people an opportunity who do not have the skills or lack language skills or for any reason, that are basically undereducated people. You are talking about blacks in particular, Hispanics, Puerto Ricans; you are talking about a lot of people in your State, a lot of people in New York City who probably will never have a chance. And what do these kids do? What do they do? Do they just vegetate?

Mr. D'AMATO. Would my colleague find it outside of logic to say that one can be supportive of increasing the minimum wage and yet, by the same token, say: Let's give to the small business entrepreneur a very limited period of time, up to 90 days, in which he can bring in those unskilled workers that he might not otherwise take the chance to bring in, to challenge them, to see if they cannot fit into that system." And if they do, most of them, we would hope will succeed and productive members of society. Employers will hire these workers, instead of turning to automatic vending machines and other devices. Entrepreneurs, small business people, in particular, will be enhanced, and the lives of those young people made more productive. Then, they will be slated into higher salaries, and certainly we hope there will be the day when they will rise well above that level as a result of the skill levels and the job experience they have acquired.

I do not see how it is inconsistent. You see, I support that training opportunity. It seems to me that—if we pass legislation that raises that minimum wage level, we may arbitrarily be cutting off hundreds of thousands, if not millions, of young people who might be afforded a job under your training concept.

Mr. HATCH. You are right, Senator. You have described it about as well as it can be described. There are two amendments on the floor right now. There is my amendment which would give a right to small business or any business to pay a training wage for the first 3 months for any brandnew employee who has never worked at the company before who does not displace a regular employee.

Mr. D'AMATO. They cannot displace another employee?

Mr. HATCH. In fact there are severe penalities if they do displace another employee.

Mr. D'AMATO. So, where there might be those who are unscrupulous and who might take an opportunity to bring in young people, and just displace someone who has been there at a higher wage——

Mr. HATCH. That is right.

Mr. D'AMATO. We build in sanctions against that in your amendment?

Mr. HATCH. That is right. Now, let me contrast that. That amendment will open the door to millions of young people, at least 2.4 million dropouts, who probably will never have a job and will wind up on welfare at a tremendous cost to society.

Mr. D'AMATO. Let me get this again. The Senator says it rather quickly. We are used to hearing these numbers. A million unemployed people, 2 million displaced workers. The Senator is saying to me that there are 2.4 million dropouts?

Mr. HATCH. We are talking just dropouts. Not talking about anybody else.

Mr. D'AMATO. Is that each year?

Mr. HATCH. That is the total in society today, 2.4 million dropouts.

Mr. D'AMATO. I have read, and I wonder if we might be able to develop some backup for this, some rather startling indications that in some of our high schools in our large urban areas, the dropout rate is as high as 50 percent annually.

Mr. HATCH. Let me ask the Senator, this 2.4 million dropouts, ages 16 to 21 in 1986; 1.2 million of this total were unemployed.

Mr. D'AMATO. In 1 year alone you are talking about almost 2.5 million youngsters who dropped out of school?

Mr. HATCH. That is right. It says none of these individuals most in need of skills and training would be eligible for the Student Learner Program that the Senator from Massachusetts is talking about. See the contrast between what we would like to do, which is a real training wage for anybody who has not worked before, of any age, any nationality, any sex, and so forth, we would open that door to all of them for this training wage and allow small business the extra incen-

tives to hire them. Contrast that with the argument of the distinguished Senator from Massachusetts, which basically is only for full-time students.

Mr. D'AMATO. Full-time students are not the problem, are they?

Mr. HATCH. It does not cover all full-time students. It only covers those full-time students who can get a job from an employer who wants to go through the bureaucratic maze of applying to the Department of Labor, getting the Department of Labor to give them a certificate on an annual basis. Every year they have to do this. Then they can have six people they can hire. That is the current law. It will increase to 12 under the proposal of the Senator from Massachusetts. That is about the only benefit you get out of the new proposal that he is proposing.

It is for full-time students and I submit that most of those, if they had to, could get out and find a real minimum wage job or better. We are talking about kids who cannot.

Mr. D'AMATO. It seems to me, as well intentioned as that might be, having two youngsters who fall within that age category, it is pretty tough to get them even to post a letter, when they are in need of financial aid from home. Usually we get a phone call reversing the charges.

I am wondering how realistic it is to think that we are going to get students to go into this certification process. We must also consider the incredible cost to the taxpayer; and the bookkeeping this requires of the employer. It would seem to me that we should be looking at the 1.2 million unemployed young people out of the 2.4 million dropouts and seeking ways to get them into not only job training but also more education. In so many respects that employment opportunity becomes very real and meaningful education to these young people.

Because I believe we are developing within this country a tremendous underclass that is growing in every dimension: As it relates to education, as it relates to employment and employment opportunity, as it relates to the development of job skills. I would hope that, notwithstanding the desire to see to it that those who need the most as it relates to protection, to see to it that unscrupulous people will not take advantage of them, that in so passing a piece of legislation designed to do that, we not disenfranchise millions of young people who are most in need of that very first-time job opportunity that might make the difference.

I could not help but compare some aspects of the life of my distinguished friend and colleague from Utah as it related to employment. My first employment opportunity was at a minimum wage job. I worked a hot dog and hamburger stand in the little community that I live in today for 75¢ an hour.

Then, after holding many intervening jobs, I was paid a very princely sum of $1.65 an hour, at a job that gave me the opportunity to complete my law school education. I worked as a custodian. I heard you refer to it as a janitor. I held a position for some 2 years and worked my way through law school.

Mr. HATCH. We are going to have to have the Senator form a janitors' caucus in the U.S. Senate.

Mr. D'AMATO. I thought that was very interesting when I heard the Senator talk about his experiences. I can share with you the fact that I saw many young people, and some older people who were desperately in need of that work opportunity and I, as a young man, certainly was.

I want you to know that, were there to have been a wage differential that may have precluded the university from being as generous as it was in providing opportunities for many, this Senator would not have had that chance to get a law school education.

I would hope that we would have an opportunity to further discuss some of the ramifications that may not be so readily put forth—I intend to support the basic proposition of increasing the minimum wage, lest there be any doubt—and the conception put forth that in so doing it, we may be killing jobs and opportunities for growth and enhancement. I certainly think that your provision is most modest in attempting to ensure that in so doing it, we do not destroy the very thing which we are attempting to preserve.

I think it is too easy to get up and rail that we have got to raise wages of the American workers who are being taken advantage of. One need only take a survey in his or her community to find that, in more cases than not, there are substantial wages, well above the minimum, that are being advertised. It is the job skills that we have to address. And simply raising the level of the minimum wage does not address that.

Indeed, it may be unintentionally—and I certainly say unintentionally—harming the very hopes and the aspirations and the job training that is so important and something that I believe that my friend from Utah and the senior Senator from Massachusetts seek to increase.

I would hope that we could pursue this in further debate because I am most interested in seeing to it that we increase employment opportunity and not decrease it.

Mr. HATCH. I appreciate the remarks of the distinguished Senator from New York and I agree with most of his remarks. I have to say, you know, under the guise of helping the working poor, they want to increase the minimum wage to $3.75 an hour and then up as high as $4.55 an hour under this bill. The problem is that $4.55 an hour is not enough for a head of household to run a household.

So, it is apparent the minimum wage should not be a vehicle to get people out of poverty. Every time you increase it, you increase everything else, too. We have had that experience now for years. When are we going to catch on? When you increase the minimum wage, you increase everything else; so it is taken away anyway in the end. There are not many people who literally get minimum wage increase and wind up getting very much more, no matter how much you go up on minimum wage because everything else starts up—goods and services.

Mr. D'AMATO. I am concerned, too, about the tens, tens—hundreds of thousands, not tens of thousands—hundreds of thousands of men and women in some of the service areas—waitresses and others—who would be, I think adversely affected.

I think of the small restaurants in the community where I live along the seashore. I have not taken the opportunity, but I assure the Senator over this weekend that I am going to go back and speak to the owners of these small establishments.

I am thinking about one in particular—Peter's Clam Bar in Island Park. They employ real people. They have real roots. They employ a good number of young college students but over the years it has been a tradition to employ many of the women of our community. They come from 30 or 40 families, and that is a lot when you are talking about a community of less than 5,000 people. They have worked there for many, many years. I am going to ask them: what will the consequences of raising these wages be as it relates to their labor pool? Will there be those one, two, or three job openings—and there is a natural attrition over a 20-year period of time—that they may not choose to fill as a result of these costs? Will we be doing a disservice to the people of that little community of Island Park where I have lived for many years, and will it result in a diminution in the opportunities of some of the young men and women who find summer employment?

Let me assure the Senator it is not just the minimum wage that draws those young people and women to that community because, obviously, there are substantial tips, and so forth, that are added on top of that.

So, I would hope we do not inadvertently, as a result of all the good intentions, destroy those opportunities for job employment. I imagine you could multiply that story throughout the length and breadth of this Nation. Indeed, it is something I think we have to be mindful of, and I hope we

would have the opportunity to more fully discuss these matters.

I am not a member of the Labor Committee. I passed that opportunity up. But I would have to say I am looking forward to, possibly in the next session, serving on that committee. Because I think that there is a lot of work that has to be done. All too often we get these bills out on the floor without the body, as you know, having had the opportunity to put in the kind of study so necessary as it relates to the formulation of policy. Then it becomes rather a matter of perception that somehow those who may raise questions are against the poor when, indeed, someone who lives in a community such as mine where 54 percent of my constituents, as of the 1980 census, were judged to be in the low and moderate income category.

I daresay I do not think that is a statistic we should be proud of, yet it is one I am cognizant of, and it is a community that I love and a community of hard working, decent people.

So, I say to those who talk and trumpet about the problems of the poor, this is someone who lives there, who understands the hopes and aspirations of those who seek through the dignity of hard work to achieve the American dream of home ownership, of economic opportunity, of providing their sons and daughters with the chance they did not have to get a good education. I hope that we would not be adding further to the burden of those families because it is not easy. It is not easy for one to continue to survive and to maintain his dignity.

I also suggest that the maintenance of a person's dignity is probably the most important thing to consider. I would suggest that would be the case, whether we are talking about the most humble of our citizens or the most lofty, even those within this institution.

I thank my good friend and colleague from Utah.

Mr. HATCH. I thank my good friend from New York.

Finally, let me just say this. I think the distinguished Senator from New York has been very correct in many of his observations today. There are only 14 percent of the total minimum wage earners who are working poor who are heads of households, if that. Frankly, I think we ought to do some things to help them so that they are not in poverty.

To saddle the whole country with this fix, it seems to me, pushes up inflation, the costs of goods and services and the loss of small business and the loss of jobs for teenagers, blacks, Hispanics, and women I think is really a catastrophe in many ways. It would be better to approach this with more intelligent approaches than what we have done in the past. Just because this has been the theoretic role of the past does not mean we have to be always linked to the past.

I get such a big kick out of always being called people who are enamored with the past. If there is any enamorment with the past, it is the people who think this bill does a lot of good, but then you add on top of that the little that the amendment that the distinguished Senator from Massachusetts has offered, and it is pathetic. I am not against helping full-time students, but if we really want training wage to work, you have to help those who need training wage. His amendment, unfortunately, does nothing for those people.

With that, we will have much more to say about that next Tuesday. I hope we can get to a vote next Tuesday on some of these matters, get to a number of votes, and I will be working to see if we can do that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I had hoped perhaps those who have been listening to this debate over the past couple of hours have a chance to examine the earlier statements where these issues were addressed in some detail during the earlier part of the debate and discussion, but let me just reference, just make a couple of responses to the arguments that have been made by the Senator from New York and the Senator from Utah.

First of all, with regard to small business, we raise the basic exemption from 362,000 to 500,000. Any small businessman or woman in America, those small shops talked about by the Senator from New York that are less than 500,000, those who are in the southern part of our country, those mom and pop stores are out. We understand the particular needs and they are out. They are not included. As a matter of fact, the percentage increase is greater in terms of exempting those small shops than the increase in terms of the individuals.

So, we have been sensitive to the problems of the small business. Thirty-seven percent increase in the size of the exemption for gross receipts; only 35-percent increase in minimum wage in the total bill. Point No. 1.

If there ever was an award for eliminating paperwork, it ought to be for our perfecting amendment in terms of the employment of full-time students. What is the requirement? The name of the student, the address of the company, the type of business, the assurance that not more than 10 percent of the employees are going to be students, because that is 10 percent of the Nation's population, and a mailing address. Sign it, mail it, and it is deemed approved.

Give me one other example in the Federal Government, any other certification, any other application, any other paperwork which is as simple as that? We simplified it dramatically, Mr. President.

Mr. HATCH. Can I give you one example?

Mr. KENNEDY. Not just yet. We have simplified it dramatically, Mr. President, and that is it.

To the more basic and the more fundamental issues, and that is about those who are students and those who are not students. Our perfecting amendment is wise for those who are not students as well as for those who are students.

We focused on those who are students, high school students. We hear a great deal about, well, what is going to happen to high school students. High school students are included in our amendment. College students are included. Part-time students, vocational education students are all included under our amendment to be able to get 85 percent of the minimum wage. We do not cover these young Americans who are not students. Why? Because we want them to become students. If you accept the premise of the Senator from Utah, you can just stay outside; you do not go back to school. I thought part of the concept was to try to get people back in school, to try to continue their education. This is an incentive to drop out of school. You can go on. You have a little trouble with your grades, you might not have been promoted last year. OK, we can get you a job down there, effectively a dead end job, albeit. Maybe you learn a few working skills but no training, because there is no training feature of this. You can learn that training; as we found out earlier in the debate, 75 percent of it probably takes 2 hours to flip a burger. This is how we are talking, make a bet on it. No one is degrading these important jobs. This country could not get along without those types of jobs which are the most difficult jobs in which some Americans have to involve themselves and still we have millions of Americans doing it to provide for their families. No one is demeaning those jobs. You demean them more by saying that no way can this Nation assure that the purchasing power of that minimum wage of 7 years ago is going to be the same today.

Oh, no, we have had prosperity. We give cost of living to the military, to the Congress, to the President of the United States, to senior citizens, but not to you. No way. This country is prosperous, as the President of the United States said just a few weeks ago, so we can afford a cost of living for all Federal employees but not for you, 16 million Americans, no way. So you have children; so you have been

working; so you have not had a pay increase for 6 years. No way, we cannot afford it. You are going to provide some potential unemployment in the future, even though, as the Senator from Utah says, 15 million of those 16 million jobs are $6 an hour or more. There is only a small percentage of people getting the minimum wage. So be it. Those are millions of families and those are parents who have to feed and clothe their kids, they have to educate them. But no way. No way. Somehow it is going to be inflated. Some way it is going to have some adverse impact in employment in spite of the fact—and I am not going to restate it, at least today—when we reviewed all of the previous records, when we have increased the minimum wage, all these dire predictions in terms of unemployment, in terms of increasing inflation just have not borne out. Those few Members, very few, who are listening to this debate I hope would get a chance to examine the RECORD of earlier today.

Mr. President, I look forward to reaching a decision. We believe we have fashioned this amendment so that it will provide for students in school, limited by hours, 20 hours. That is basically our judgment, those of us supporting this, as a judgment in terms of the educational component. Your get more than 20 hours, you have an adverse impact in terms of the educational experience. We try to encourage people to remain in school, not to drop out of school, encourage those who have dropped out to go back to school. We believe that that is the appropriate way to try to shape a program for those individuals who will be making the subminimum.

I think we have addressed the issue of what our amendment does, the paperwork issue, the basic concept of why we approach this amendment in this particular way. I hope over the course of the weekend our colleagues will have a chance to examine the excellent record that has been made by my good friend and colleague from Utah and the few words I have had the opportunity to present to the Senate and then when the bell is rung and the roll called they would overwhelmingly support my amendment.

Mr. President, I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator yields the floor. The Senator from Utah.

Mr. HATCH. I am not going to keep us much longer. I enjoy all of the rhetoric, but if it is important to give people a living wage, then maybe it ought to be $6 an hour, $7 or $10 or a million, to use Senator GRAMM's analogy. The reason you do not do that is because you know that it just pushes everything up. It stands to reason. If you push $3.35 up to $3.75, then up to $4.55, everybody else has to go up, too. You have to. And I might add the distinguished Senator from Massachusetts is the first to come in and say we have got to help everybody. Well, he is noted for that. In fact, his programs are so broad and large that they never pass.

Mr. KENNEDY. Unless they are cosponsored by the Senator.

Mr. HATCH. Unless they are cosponsored by some of the rest of us. The fact is we can come up with wonderful ideas all day long but somebody has to pay for them, and for this minimum wage idea of the distinguished Senator from Massachusetts to take care of 4.7 million people—not 16 million, 4.7 million people—who are paid the minimum wage, everybody in society has to take it on the nose. To have the audacity of saying he is for the poor when all he helps are full-time students and not those who cannot get a job, and says that is compassion, well, I cannot sit here and let it go by without rebuttal.

The reason I held up the editorials was because since we have been debating this issue it has taken years to get the American people to start looking at it and to realize it is more significant and more important than just the cliche that we want everybody to have a livable wage. This increase in the minimum wage will not give people a livable raise. It will be far better to attack this problem in a reasonable way. Why put up with this fiction any more?

Frankly, for the first time in history, newspapers all over this country are writing why increases in the minimum wage are not good, and they are not good for the poor. Most of all, they are not good for blacks and Hispanics and other minorities. Above all, they are not good for women. The fastest growth of single ownership of small businesses in this country happens to be women-owned businesses. This amendment, it seems to me, takes none of that into consideration and just goes along with the past because it has been a good cliche, it has been a good political slogan but continues to saddle us with past ideas that have long since been outdated. Let us approach these things more intelligently.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum is noted. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MIKULSKI. Mr. President, I support raising the minimum wage. Historically, the minimum wage has been pegged at about 50 percent of hourly earnings. By that measure the minimum wage today should be $4.45 an hour.

It has been 6 years since the minimum wage was last increased to its present level of $3.35 an hour. In that time, we have seen a rise in the number of women entering the workforce and we have seen a rise in the number of women and children in poverty.

A full time worker earning minimum wage makes less than $7,000 a year. This is not a subsistence wage. It does not allow full time workers to provide bare necessities for their families. Nor does it support the 1980's version of a family of three—a teenage mother who lives with her mother.

In fact this minimum wage has contributed to the emergence of a new phenomenon: The working poor. These are real people, who live in Baltimore and other American cities. I have seen them. They want to work, do work, and are still chosing between feeding their kids and housing their kids.

If this situation continues, taxpayers will always have to make up the difference, through welfare and other programs, between what that hospital orderly earns and what it costs her to live in her apartment on Fulton Ave. in Baltimore and feed her kids.

Mr. President, the Senate has passed the Family Security Act of 1988, the welfare reform bill. The emphasis in that bill is upon giving people the resources to help themselves. The minimum wage is the least workers should earn in our society. Workers should be able to help themselves get the American dreams we all expect, such as home ownership, schooling for their children.

THE EXPORT ENHANCEMENT PROGRAM

Mr. BOSCHWITZ. Mr. President, I understand that earlier today there was a colloquy or dicussion on the floor about the Export Enhancement Program and severe criticism of the Reagan administration's handling of the Export Enhancement Program. I would like to talk a little bit about it.

Apparently the criticism was that the Reagan administration fought it; that it was slow in implementing it; that only because it was mandated did they implement it at all.

I would point out that the Export Enhancement Program was created administratively by the Reagan-Bush administration in May 1985, and that it was implemented by the administration long before there was legislative authority to do so; that it was something that was permissible within the general legislation applying to the Agriculture Department; that the Reagan administration took the bull by the horns, so to speak.

There were enormous surpluses. The result was that they saw that the Europeans and others of the world were using export enhancement techniques. So they decided, as much as they disliked it, as much as any reasonable person dislikes subsidizing exports, they decided that it had to be done and they did it.

They did it independently of the Congress. As a matter of fact, the Congress did not specifically create the statutory authority for the program until the passage of the 1985 farm bill, 2 days before Christmas in 1985. And then the farm bill became law.

I understand that some of this talk about all of this came up because apparently an aide to Governor Dukakis, in pointing out ways in which one could make savings in the budget, pointed to the farm aspects of the budget and specifically said, yes, this is the EEP, the Export Enahncement Program. That is one that we could do away with.

Well, it is one that the Congress probably is not going to let any administration, whether it be a Bush administration or Dukakis administration, do away with. Perhaps that is a signal that the Dukakis administration would not use the authority with any aggression or they would not use it very aggressively or very creatively. And I think this administration has done just that.

Congress placed a $1.5 billion cap on the EEP, on the Export Enhancement Program, and the Reagan-Bush administration surpassed that level and had to announce on July 30, 1987, that it would continue to operate the Export Enhancement Program, even though it lacked the congressional mandate to do so and even though the funds for it had all been used up.

So, indeed, the Reagan-Bush administration was quite aggressive in pursuing the Export Enhancement Program to help out farmers. We have a very, very large surplus, particularly in the area of wheat. The Europeans were being extraordinarily aggressive, going into markets that had historically been American markets in flour and for wheat. Sometimes the export enhancement subsidy exceeded the value of the goods. And it really was an aggressively utilized program, and I would take exception to someone who said that it was not utilized aggressively and point out, again, that the Reagan-Bush administration utilized it even before the Congress acted.

As a matter of fact, the Congress, when it was controlled in both Houses—if one were to become partisan about the matter, when it was controlled in both Houses by the other party, by the Democratic Party—voted to restrict the moneys that were necessary for running the program and, in fact, did not give enough money to the program to run it on the same scope that the Reagan-Bush administration was seeking to do.

So that we feel it is a good program. Whether or not it has to be utilized right now, when surpluses, for instance in the case of wheat, are disappearing very rapidly, that is another question. I think it has to be used, and should be used, perhaps more sparingly at the moment when there is not the huge production to support the use of it as there has been in the past. Not the huge surpluses.

As a matter of fact, if one looks at the stockpiles of wheat or corn or other commodities—in the case of soybeans there are no surpluses, there are no stockpiles. And in the case of corn the stockpile will probably go down by approximately 70 percent by the middle of next year, and wheat as well will become a very small stockpile indeed.

This does not mean that we should give up the cause and absolutely allow what has happened before to happen, and that is that the Europeans again most particularly should steal the historic American customers. But it is less and less likely that these kind of subsidies will be used, not only by ourselves but throughout the world, as there is a general tightening of stocks. And as market prices rise, obviously the necessity of using such subsidies will not be as great as at a time when prices are very low, when you are out there fighting for every order, and when you have enormous stockpiles behind the sale that is being made.

So I believe that the Reagan-Bush administration, which has been accused of having an insensitivity to farmers, has been very sensitive indeed. If one measures by way of dollars what has been expended on the agricultural sector, certainly this administration must be deemed to be extraordinarily sensitive. The expenditurers went up to $25 or $26 billion—a record number. Regretfully, that had to be done in order to support the agricultural sector of our county. And I fully believe that if the moneys had not been spent there would have been a general collapse, not only in agriculture but in all of rural America, that would have cost the taxpayers in the United States far more dearly than the cost of the agricultural programs.

So, I think these things have to be kept in balance. I think that the Export Enhancement Program continues to be a sound one. I am sure that the administration will continue to aggressively utilize it, as it has done in the past, and I believe that those who would say that the Reagan-Bush administration fought the EE Program, that they were slow in implementing the program, that they only did so when it was mandated, forget the history of the program. And that history, of course, is that the program was created administratively by the Reagan-Bush administration, utilized administratively, and that the Congress was well over half a year behind in exercising its authority and making the authority statutory.

So, we hope that markets will be stronger. We hope that markets do not require subsidies in international trade. They are very, very disorienting to all of international trade. Hopefully trade bills that are protectionist will not come along, either here or abroad, that will bring about the necessity of these things. And in the process I think farmers will be well served.

I yield the floor.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 12:05 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill.

H.R. 2342. An act to authorize appropriations for the Coast Guard for fiscal year 1988, and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. GRAHAM).

At 1:59 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 2789. An act to require the Secretary of the Treasury to mint and issue one-dollar coins in commemoration of the 100th anniversary of the birth of Dwight David Eisenhower.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 348. Concurrent resolution expressing the sense of the Congress concerning the 1988 Seoul Olympic games.

MEASURES HELD AT THE DESK

The following bill was ordered held at the desk by unanimous consent:

H.R. 3408. An act to increase the amounts authorized for the Colorado River storage project.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3874. A communication from the Chairman of the National Advisory Council on Women's Educational Programs, transmitting, pursuant to law, the Council's thirteenth and final report; to the Committee on Labor and Human Resources.

EC-3875. A communication from the Presiding Officer of the Advisory Council on Education Statistics, Department of Education, transmitting, pursuant to law, the thirteenth annual report of the Council; to the Committee on Labor and Human Resources.

EC-3876. A communication from the Designated Federal Official, National Board, Fund for the Improvement of Postsecondary Education, Department of Education, transmitting, pursuant to law, the annual report of the Board for fiscal year 1987; to the Committee on Labor and Human Resources.

EC-3877. A communication from the Chairman of the Department of Education, transmitting, pursuant to law, the annual report of the National Advisory Board for International Education Programs for fiscal year 1987; to the Committee on Labor and Human Resources.

EC-3878. A communication from the Chairman of the Intergovernmental Advisory Council on Education, transmitting, pursuant to law, the Council's biennial report for fiscal years 1986 and 1987; to the Committee on Labor and Human Resources.

EC-3879. A communication from the Chairman of the National Council on Vocational Education, transmitting, pursuant to law, the 1987 report on Council membership, activities and preliminary recommendations; to the Committee on Labor and Human Resources.

EC-3880. A communication from the Executive Director of the National Advisory Council on Educational Research and Improvement, transmitting, pursuant to law, the twelfth annual report of the Council; to the Committee on Labor and Human Resources.

EC-3881. A communication from the Chairman of the National Advisory Committee on Accreditation and Institutional Eligibility, transmitting, pursuant to law, the annual report of the Committee for fiscal year 1987; to the Commitee on Labor and Human Resources.

EC-3882. A communication from the Secretary of Education, transmitting, pursuant to law, copies of the fiscal year 1987 reports of the Department of Education's advisory committee; to the Committee on Labor and Human Resources.

EC-3883. A communication from the Chairman of the National Advisory Council on Adult Education, transmitting, pursuant to law, the fiscal year 1987 annual report of the Council; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

S. 2800: An original bill to amend the Nuclear Waste Policy Act of 1982 with respect to the Office of Nuclear Waste Negotiator and the Monitored Retrievable Storage Commission (Rept. No. 100-517).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2748: A bill to extend the authorization in Public Law 96-309 to design and construct a gunite lining on certain reaches of the Bessemer Ditch in the vicinity of Pueblo, Colorado (Rept. No. 100-518).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HUMPHREY (for himself and Mr. SIMON):

S. 2797. A bill to amend title II of the Social Security Act to remove the dependency test applicable to certain children adopted by Social Security beneficiaries and to make improvements in the administration of the Social Security Program; to the Committee on Finance.

By Mr. BENTSEN:

S. 2798. A bill to designate the building which will house the U.S. District Court for the Eastern District of Texas in Lufkin, TX as the "Ward R. Burke United States Courthouse"; to the Committee on Environment and Public Works.

By Mr. GRAHAM:

S. 2799. A bill to designate the Federal building to be constructed in Lakeland, FL, as the "Lawton Chiles, Jr., Federal Building"; to the Committee on Environment and Public Works.

By Mr. JOHNSTON from the Committee on Energy and Natural Resources:

S. 2800. An original bill to amend the Nuclear Waste Policy Act of 1982 with respect to the Office of Nuclear Waste Negotiator and the Monitored Retrievable Storage Commission; placed on the calendar.

By Mr. MELCHER:

S. 2801. A bill to amend the Older Americans Act of 1965 to hold harmless area agencies affected by the elimination of the prohibition against tribal organizations receiving both title III and title VI services made by Older Americans Act Amendments of 1987; to the Select Committee on Indian Affairs.

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 2802. A bill to suspend for a 3-year period the duty on (1) 3-quinolinecarboxylic acid, 1-ethyl-6-fluoro-1,4-dihydro-4-oxo-7-(1-piperazinyl), also known as norfloxacin; to the Committee on Finance.

By Mr. D'AMATO:

S. 2803. A bill for the relief of Joan Daronco; to the Committee on the Judiciary.

By Mr. D'AMATO:

S. 2804. A bill to amend the Judicial Survivors' Annuity Act to eliminate the requirement that a Federal justice or judge, who is assassinated, must serve a specified period of time before his or her survivors become eligible for benefits under the act; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself, Mr. MCCAIN, Mr. INOUYE, Mr. BURDICK, Mr. DOMENICI, and Mr. HOLLINGS):

S. 2805. A bill to amend title VII of the Social Security Act to authorize appropriations for the Office of Rural Health Policy and to establish a National Advisory Committee on Rural Health, and for other purposes; to the Committee on Finance.

By Mr. HATFIELD:

S. 2806. A bill to require the transfer of the decommissioned Coast Guard cutter *"Glacier"* to the State of Oregon for use as a maritime museum and display; to the Committee on Commerce, Science, and Transportation.

By Mr. GRAMM:

S. 2807. A bill to permit the Federal Communications Commission to utilize value based assignments in awarding licenses for the use of the electromagnetic spectrum; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WALLOP (for himself, Mr. DOLE, Mr. BYRD, Mr. LUGAR, Mr. NUNN, Mr. WARNER, Mr. BOREN, Mr. WILSON, Mr. HELMS, Mr. SYMMS, Mr. MCCLURE, Mr. KASTEN, Mr. MCCAIN, Mr. SIMPSON, Mr. KARNES, Mr. NICKLES, Mr. BUMPERS, and Mr. DECONCINI):

S. Res. 474. A resolution in support of the President's policy regarding Soviet ABM Treaty violations; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HUMPHREY (for himself and Mr. SIMON):

S. 2797. A bill to amend title II of the Social Security Act to remove the dependency test applicable to certain children adopted by Social Security beneficiaries and to make improvements in the administration of the Social Security Program; to the Committee on Finance.

REMOVAL OF SOCIAL SECURITY DEPENDENCY REQUIREMENTS TO CERTAIN ADOPTED CHILDREN OF BENEFICIARIES

● Mr. HUMPHREY. Mr. President, on behalf on the junior Senator from Illinois and on my own behalf, I am introducing a bill to eliminate discrimination against adopted children under the Social Security System.

Under current law, children adopted after a worker has qualified for Social Security benefits may only receive benefits if the child was living with the worker in the United States and receiving at least one-half of his or her support from the worker for the full year before the worker became eligible for benefits.

The logic behind current law is flawed. The notion that one would adopt a child solely to receive addi-

tional benefits is unfounded. With the costs of adoption averaging between $6,000 and $15,000, on top of the time and expense of rearing a child, it is unlikely that one would adopt a child just to receive a few more dollars a month.

A loving couple is going to adopt a child regardless of whether or not they are eligible for the Social Security disability benefits. Their willingness to give of themselves and to love their child is the paramount reason they adopt.

This legislation would amend section 202(d)(8)(D) of the Social Security Act to eliminate the special dependency test applicable to children adopted after a worker's onset of disability or entitlment to retirement benefits.

Mr. President, the bill will eliminate discrimination against adopted children, and remove a possible financial disincentive for Social Security beneficiaries to adopt children. It will also simplify program administration by eliminating a time-consuming, labor-intensive element of child benefit applications.

Additionally, elimination of the dependency test will not result in abuse by beneficiaries outside the United States because current law already contains a requirement that a child's adoption be decreed by a court of competent jurisdiction within the United States.

This bill has the support of the administration and the leading child welfare and adoption organizations in the country. I urge my colleagues to support this modest proposal.●

● Mr. SIMON. Mr. President, today I join Senator HUMPHREY in introducing a bill which eliminates a unique form of discrimination against adopted children. Under current Social Security law, an adopted child is not entitled to benefits payable to a dependent of a disabled worker if the child was not adopted prior to 1 year before the disability occurred. Conversely, a natural child is automatically entitled, regardless of timing of his or her birth. I do not believe this is fair.

The current law exists because of a flawed though well intended desire to protect the system. There is the belief that a couple would adopt a child, after a disability occurs with one of the partners, in order to receive the benefit payments that accompany an adopted child. While the possibility exists, the probability is low. If a couple wished to adopt a child to obtain the benefits, they would be quickly deterred by today's average cost of adoption. Adoption experts estimate fees charged to adoptive parents range from zero to $9,000 with reports of some adoptions reaching highs of $30,000. The average cost is $6,000. These costs coupled with the cost of raising a child today makes profitability a highly suspect theory.

The system must provide for the prevention of abuse, but to presuppose abuse while discriminating against a certain type of adopted child is morally wrong. The bill being introduced today would amend title II of the Social Security to provide that the legally adopted child shall be treated the same as a natural child regardless of the time the adoption occurred. I believe this is only fair. I urge my colleagues to join in correcting this inequity.●

By Mr. GRAHAM:

S. 2799. A bill to designate the Federal Building to be constructed in Lakeland, FL, as the "Lawton Chiles, Jr., Federal Building;" to the Committee on Environment and Public Works.

LAWTON CHILES, JR., FEDERAL BUILDING

● Mr. GRAHAM. Mr. President, as we prepare to bid farewell to one of our most distinguished colleagues, Senator LAWTON CHILES, we take comfort in knowing that the legacy of leadership and responsible legislation Senator CHILES leaves us will remind us of his hard work again and again.

It is fitting, therefore, that we commemorate the permanence of his contribution by naming the new Federal Building in his birthplace and hometown, Lakeland, FL, the "Lawton Chiles, Jr., Federal Building".

The Federal Building will house various Government services and make them more accessible to the residents of Polk County. It will promote Government efficiency and direct assistance to those who use Federal services and participate in Federal programs. That efficiency and accessibility accurately reflect the credo of Government service my colleague and friend has lived by in his 18 years in this U.S. Senate and in his respected career as a State legislator in Florida.

The naming of a building is a small acknowledgement of the great debt the people of Florida and the people of this Nation owe to LAWTON CHILES. But the Lawton Chiles, Jr., Federal Building will serve as a daily reminder of what public service can and should be.

I know Senator CHILES seeks no recognition for his service—his joy has been in the serving—but all of us are grateful for the chance to salute him and I urge my colleagues to dedicate this new Federal Building to him.●

By Mr. MELCHER:

S. 2801. A bill to amend the Older Americans Act of 1965 to hold harmless areas agencies affected by the elimination of the prohibition against tribal organizations receiving both title III and title VI services made by the Older Americans Act Amendments of 1987; to the Select Committee on Indian Affairs.

OLDER AMERICANS ACT AMENDMENTS

● Mr. MELCHER. Mr. President, prior to the Older Americans Act (OAA) Amendments of 1987, there was a stipulation in the act that individuals to be served by tribal organizations under title VI would not receive services under title III. This applied even if title III funds were used to provide a different array of services. The intent of that provision was to prevent duplication of services but eventually it had an adverse effect, leaving many Indian elders unserved altogether.

Testimony at hearings held by the Senate Special Committee on Aging in 1986 and by the Aging Subcommittee of the Committee on Labor and Human Resources in 1987, called for greater coordination between titles III and VI since the restriction excluded many Indian elders from any services.

Mr. President, the 1987 OAA amendments eliminated the prohibition on individuals or tribal organizations receiving services or funds under title VI from also benefiting from the title III program. As amended, the law now allows older Indians to receive assistance under both the title VI and title III programs. The congressional purpose with this change, as it appears in the committee reports, was to correct the unintended effect of the prior law which had resulted in making ineligible for title III services older Indians who could be served by a title VI grant but were not, or in making older Indians who receive only one type of service under title VI ineligible for any other services under title III.

I believe that this change in the law reflects congressional concern that older Indians receive and have access to needed services under the Older Americans Act to the same extent as all other older Americans.

The change, however, was not intended to harm existing grantees under title III of the act. Mr. President, the unanticipated consequence of the change in the act has resulted in a decrease of title III funds to some area agencies on aging. This means that services previously provided by projects through area agencies on aging will be cut back or eliminated. How do we explain to an elderly recipient of services under the act why he or she cannot get a meal or why a nurse is not visiting?

To clarify congressional intent, I am introducing legislation today to correct this unintended result. In addition, I will make every effort to ensure that there are sufficient funds appropriated under the act to properly implement the change. We must guarantee that no one suffers from the Older Americans Act amendments that Congress passed last year.●

By Mr. LAUTENBERG:

S. 2802. A bill to suspend for a 3-year period the duty on (1)3-Quinolinecarboxylic Acid, 1-ethyl-6-Flouro-1, 4-dihydro-4-oxo-7-(1-Piperazinyl)-, also known as Norfloxacin; to the Committee on Finance.

SUSPENSION OF DUTY

● Mr. LAUTENBERG. Mr. President, today I am introducing legislation to suspend for a 3-year period the duty on norfloxacin. Norfloxacin is a patented product which is licensed to the U.S. pharmaceutical manufacturer, Merck & Co., Inc. It is the key ingredient in the manufacture of NOROXIN®, an oral antibiotic used in the treatment of urinary tract infections. NOROXIN® is an important part of the armament for the physician treating urinary tract infections because it demonstrates activity against certain organisms resistant to other classes of antibacterial agents, such as aminoglycocides, penicillins, cephalosporins and tetracyclines.

Duty suspension is warranted because norfloxacin, as a patented product, is unique and it is not manufactured in the United States. It must be imported from Japan. There are no direct substitutes currently in the U.S. market. Suspension of the duty of norfloxacin will enable the importer, Merck & Co. Inc., to be more competitive in foreign and domestic markets. Merck exports have grown to approximately $500 million annually while importing one-seventh of that value to the United States

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2802

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting in numerical sequence the following new item:

(1)3-Quinolinecarboxylic acid, 1-ethyl-6-fluoro-1, 4-dihhydro-4-oxo-7-(1-piperazinyl)-, also known as Norfloxacin (provided for in item 411.9600, part 2D, 1C schedule 4).	No change	On or before the close of the 3-year period beginning on the date of the enactment of this item.

SEC. 2. The amendment made by the first section of this Act shall apply with respect to article entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of the Act.

By Mr. D'AMATO:

S. 2803. A bill for the relief of Joan Daronco; to the Committee on the Judiciary.

S. 2804. A bill to amend the Judicial Survivors' Annuity Act to eliminate the requirement that a Federal justice or judge, who is assassinated, must serve a specific period of time before his or her survivors become eligible for benefits under the act; to the Committee on the Judiciary.

RELIEF OF JOAN DARONCO AND AMENDMENTS TO JUDICIAL SURVIVORS ANNUITY ACT

● Mr. D'AMATO. Mr. President, I rise today to introduce two bills: a bill for the relief of Mrs. Joan Daronco, widow of recently slain Federal district court judge, Richard J. Daronco, and a related bill to correct the flaw in the Judicial Survivors' Annuity Act which necessitates that relief. By a twist of fate, Mrs. Daronco faces denial of benefits payable under the Judicial Survivors' Annuity Fund for the sudden, tragic death of her husband. The private bill will allow her to receive benefits even though the requisite 18-month vesting period had not run.

As my colleagues may recall, on May 21, 1988, Judge Richard Daronco was accosted by a gun brandishing assailant while mowing his lawn. He was pursued and gunned down in cold blood. Thereafter, the assailant turned the 38-caliber Smith & Wesson revolver on himself.

The gunman, Charles Koster, was a retired police officer whose senseless acts were motivated by revenge for an adverse ruling disposing of his daughter's sexual discrimination suit against a bank. It is ironic that a man sworn to uphold the law ended his life through a violent violation of that law.

Judge Daronco was a friend. I was privileged to recommend him to President Reagan for appointment to the bench. He was a wise and accomplished jurist who was a fine addition to the District Court for the Southern District of New York. Unfortunately, after less than 1 year of service, to the shock of us all, he was cut down.

The judge left his wife, Joan, and five children. These survivors, however, could be denied death benefits unless the private measure is adopted because Judge Daronco was snatched from the bench by his killer's bullet before his benefits vested. It is appropriate that Congress direct that benefits be justly paid.

To obviate the need for private relief in the future, I am also introducing a bill to amend current law to eliminate the 18-month vesting period where, as in this case, the judge was the victim of assassination.

It would be perversely unjust to allow murder to thwart the purpose of the Judicial Officer's Annuity Fund. It is equally unjust not to correct the law now to avoid a recurrence of this circumstance in the future.

I urge my colleagues to support these measures.●

By Mr. GRASSLEY (for himself, Mr. MCCAIN, Mr. INOUYE, Mr. BURDICK, Mr. DOMENICI, and Mr. HOLLINGS):

S. 2805. A bill to amend title VII of the Social Security Act to authorize appropriations for the Office of Rural Health Policy and to establish a Natinal Advisory Committee on Rural Health, and for other purposes; to the Committee on Finance.

RURAL HEALTH

● Mr. GRASSLEY. Mr. President, today I am introducing a bill, on behalf of myself and Senators MCCAIN, INOUYE, BURDICK, DOMINICI, DURENBERGER and HOLLINGS, which, if it becomes law, will enhance the importance and viability of the recently created Office of Rural Health, and the recently commenced Rural Health Research Centers Program. The bill would not break new ground, in that the activities it authorizes are already underway. But the bill would provide greater certainty or viability for these activities, and it would indicate that the Congress is truly serious about addressing the problems involved in providing health care in rural communities.

This bill would do three things: First, it would authorize $3 million for the operating expenses of the Office of Rural Health (the office was authorized but funds for it were not). Second, it would authorize $3.0 million for the Rural Health Research Centers Program ($1.5 million has been appropriated, but not authorized, for this program). Third, this bill would establish by statute the national advisory committee on rural health and require it to report periodically to the Congress (the committee was administratively established by the Secretary of Health and Human Services).

In the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), Congress authorized creation of an Office of Rural Health, but did not authorize funds for it, and no funds were appropriated specifically for its operating costs. Congress apparently assumed that the parent Department of Health and Human Services would divert sufficient funds for the office from within the resources Congress made available to the Department. As a practical matter, this has meant that staff, and such funds as have been necessary to run the office, have come from the Health Resources and Services Administration.

Unfortunately, HRSA is on a very tight budget, and has had difficulty in providing adequate funds to the office. In fact, HRSA has taken some funds, for support of the administrative overhead the agency incurs in providing an administrative home for the office, from the very minimally funded rural health research centers program which the office of rural health is responsible for managing.

In addition to managing the Rural Health Research Centers Program, the office must also provide staffing for the national advisory comimttee. As I noted earlier, this committee was created administratively by the Secretary of Health and Human Services. This is a body to which the Congress is looking for guidance and advice on the very difficult health care problems facing our rural communities.

In short, Congress has created an Office of Rural Health to spearhead Federal efforts to come to grips with the serious problems faced by our rural communities as they try to provide adequate health care for their citizens, but it hasn't authorized funds for this office, nor has it shown enough interest in the national advisory committee to require that its reports be sent routinely to the Congress. If Congress is serious about dealing with these problems, and is serious in creating an Office of Rural Health, it should be willing to authorize adequate funds for the operating costs of the Office of Rural Health, and not leave the office to eke out minimal support from its parent agency.

Therefore, the bill I am introducing today would authorize $3 million for the operating costs of the office. If enacted, this authority should make it easier for the Appropriations Committees to provide funds directly to the office. This, in turn, should enhance the clout of the office within HRSA, and vis-a-vis the Health Care Financing Administration, making it easier for it to achieve the mission Congress wishes it to achieve.

With respect to the Rural Health Research Centers Program, the Appropriations Committees provided $1.5 million for it for fiscal year 1988, and have included a like amount in he appropriation bills for the coming fiscal year. It seems to me that, if Congress is serious about creating a Rural Health Research Centers Program, it should do more than fund it on an annual ad hoc basis through the appropriations process. The program administrators and the center directors need to have some guarantee that support will be available for the period of time needed to mount a research effort and carry it to fruition. Insofar as HRSA leadership will be called on to provide administrative and logistical support for the Office of Rural Health, they, too, need to know that the Congress places a high priority on the work of this office.

Furthermore, it is obvious that $1.5 million is not a large amount of money with which to run a research program from which the Congress wishes to generate knowledge which will help it make health policy. As I noted earlier, HRSA has taken some funds, around $250,000 in fiscal year 1988, to meet overhead costs, from the Research Centers Program to meet overhead costs, reducing the amount available to invest in the research centers to $1.3 million. I understand that HRSA plans to take $300,000 in fiscal year 1989 for overhead. With the fiscal year 1988 money, the office will support 5 research centers. On average, the centers will receive about $220,000 each. Welcome as this new program is, and as helpful as the research it sponsors will be, even modestly greater funds would help this program have the impact Congress wishes it to have.

For these reasons, the bill I am introducing authorizes $3 million for each of the next 3 years for the Research Centers Program.

Finally, the bill would authorize the National Advisory Committee on Rural Health for 3 years, specify its general composition, stipulate that its functions include advising the Congress concerning the provision and financing of health care services in rural areas, specify that it hold at least 3 meetings per year, require that it produce an annual report, and require that it provides its reports to Congress. These criteria parallel very closely the criteria established by the charter provided for the committee by the Department. Such sums as are necessary are authorized for the operating expenses of the committee.

Providing legislative authority for the national advisory committee will enhance its importance within the department, make it less vulnerable to shifting administrative priorities or to the comng change-over in national administrations. The problems our rural communities face in providing health care to their citizens are surely going to be with us for some time, and we need to make sure that this advisory committee is able to help the Congress deal with these problems over the long haul.●

● Mr. DOMENICI. Mr. President, I am pleased to cosponsor S. 2805. This bill should lead to improved research into rural health care and the problems confronting rural health care. It should foster more effective policies and programs.

I remain concerned about rural America. One key concern is the stability and viability of rural health care. I have worked diligently, with my colleagues in the Senate, to improve Federal health programs and meet the health care needs or rural Americans.

A recent effort I supported was the Omnibus Reconciliation Act of 1987 provision establishing the Office of Rural Health Policy in the Department of Health and Human Services. Many of us in Congress felt it was crucial to have a focal point for rural health issues and activities—an officer dedicated to examining and addressing the broad issues and problems facing rural health care systems.

Over the past year, I have been encouraged by this office's start. The office has developed a cooperative relationship with the Health Care Financing Administration for coordinating rural health care policy issues. In addition, the office is administrating a Rural Research Center Grant Program and is assisting with the Secretary's recently appointed Rural Health Advisory Committee.

I believe such efforts are necessary to tackle rural health care issues. I want the efforts to continue. I support highlighting the efforts. S. 2805 builds upon past congressional actions and serves to reaffirm our commitment ot understanding and improving the stability of rural health care—a vital concern for rural Americans.

Once again, as a member of the Senate Rural Health Caucus, I am pleased to join my colleagues in supporting Senator GRASSLEY's bill.●

● Mr. McCAIN. Mr. President, today I and my distinguished colleagues—Senators BURDICK, INOUYE, and DOMENICI—join Senator GRASSLEY in introducing a small but important piece of rural health legislation.

If adopted, the legislation will do three things. First, it would provide authorization for funding the activities of the Office of Rural Health within the Department of Health and Human Services. Second, it would require the Director of the Office of Rural Health to establish and support rural health research centers across the country. And, third, it would mandate the creation of a National Advisory Committee on Rural Health.

As we in this body are aware, health care delivery in the rural areas of our individual States is in the midst of a crisis.

While the health care delivery system in all of America is facing change, some areas of our country are faced with enormous pressures. There is perhaps no region of our country—or area of our States—whose health care delivery system is being threatened as much as the rural delivery system. Rural communities are experiencing a severe shortage of caregivers—many even going without essential services, such as the delivery of babies. And, many rural hospitals are being faced with the very real possibility of having to close their doors to a lack of reimbursement and an environment riddled with many changes, including the move from an emphasis on inpatient care to an emphasis on outpatient care.

While, indeed, part of the current scenario is unavoidable—that's not the case for the bulk of the current scenario.

Congress has been paying a great deal of attention to the problems facing rural health care over the past couple of years. Both Houses of Con-

gress have established very active Rural Health Caucuses. The Budget Reconciliation Act of 1987 contained an unprecedented number of provisions related to rural health—a fact which I attribute largely to the increased congressional attention on the problems facing the rural health care delivery system.

Among the rural health items in the reconciliation bill was a provision calling on the Secretary of Health and Human Services to create an Office of Rural Health. In response, the Office was opened earlier this year.

In providing authority for the creation of the Office of Rural Health, however, Congress failed to fund the activities of the Office. As a result, HHS has had to take money from other areas in its budget to meet the Office's operating expenses. In order to meet the expenses—the bulk of the funding coming from the limited pool of funds Congress appropriated for the Rural Research Centers Grant Program. This legislation, which my colleagues and I are offering today, would resolve the funding problem for the Office by authorizing the allocation of $3 million toward its operational costs.

As we in Congress have grappled with the serious problems facing our Nation's rural health care delivery system, we have been frustrated with the lack of up-to-date centrally located information concerning the problems specifically facing our Nation's rural health care delivery system. Thoughtful policymaking and wise decisionmaking by those in the health care industry requires accurate, up-to-date information. It is out of a desire to make such information available that the idea of establishing a rural research grant program emerged.

In last year's appropriations bill a provision was included to provide $1.5 million for the funding of a Rural Research Centers Grant Program. While the importance of this initiative should not be minimized, we believe this program is important to approach in such an ad-hoc manner. The legislation we are introducing today will authorize $3 million for the funding of the Rural Research Center's Program. It will provide some sense of stability for the program, as well as to assure that money set aside for the program is not used for other purposes—such as the operating budget for the Rural Research itself.

The last component of the legislation regards the creation of a National Advisory Committee on Rural Health. Under administrative authority, the Secretary of HHS recently created a National Commission on Rural Health within HHS. In the effort to get a handle on how we might work to resolve those problems facing the rural health care delivery system which are truly resolvable, we must rely on the experts. Having a National Advisory Committee on Rural Health, composed of rural health experts from across the country to advise us on matters pertaining to rural health, will go a long way in assisting us in our efforts to develop sound policy approaches to resolving the problems facing the rural health care delivery system.

Mr. President, I applaud my distinguished colleague from Iowa, Senator GRASSLEY, for taking the initiative in developing this proposal. I am pleased to join with him as an original cosponsor. I hope that we will be able to move this small, but significant piece of rural health legislation before the end of the session. As such, I urge the rest of my colleagues to take a close look at this bill.●

By Mr. HATFIELD:

S. 2806. A bill to require the transfer of the decommissioned Coast Guard cutter *Glacier* to the State of Oregon for use as a maritime museum and display; to the Committee on Commerce, Science, and Transportation.

TRANSFER OF DECOMMISSIONED COAST GUARD CUTTER

● Mr. HATFIELD. Mr. President, today I am introducing legislation to provide for the transfer of ownership of the decommissioned cutter, *Glacier,* from the Coast Guard to the State of Oregon.

The *Glacier* has been decommissioned by the Coast Guard and remains in storage pending disposal. If the transfer is made, the State will move the 310-foot ice breaker to the city of Reedsport, located along the coast of Oregon. The city intends to moor the 1953 cutter at its port and convert the ship into a floating maritime museum as part of the city's long-term economic development strategy.

This legislation has been endorsed by the Coast Guard. Yesterday, the companion bill in the House of Representatives, introduced by Congressman PETER DEFAZIO, was favorably referred out of the House Committee on Merchant Marine and Fisheries. The city of Reedsport has assured me that funds are in place to begin the conversion and maintain the ship thereafter. This bill does not require an appropriation, but is necessary to address a technical detail and make the transfer legal.

Mr. President, I ask unanimous consent that a copy of the bill appear immediately following my statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2806

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall transfer to the State of Oregon the decommissioned Coast Guard cutter "Glacier", in such condition and along with such equipment as the Secretary considers to be appropriate, for use as a maritime museum and display consistent with the long military service and history of such cutter.●

ADDITIONAL COSPONSORS

S. 1538

At the request of Mr. KASTEN, the names of the Senator from California [Mr. CRANSTON] and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of S. 1538, a bill to protect the world's remaining tropical forests.

S. 1738

At the request of Mr. WILSON, the names of the Senator from Oregon [Mr. HATFIELD] the Senator from Connecticut [Mr. DODD] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 1738, a bill to make long-term care insurance available to civilian Federal employees, and for other purposes.

S. 2199

At the request of Mr. CHAFEE, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 2199, a bill to amend the Land and Water Conservation Act and the National Historic Preservation Act, to establish the American Heritage Trust, for purposes of enhancing the protection of the Nation's natural, historical, cultural, and recreational heritage, and for other purposes.

S. 2572

At the request of Mr. BENTSEN, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 2572, a bill to amend title XVIII of the Soviet Security Act to recognize as an allowable cost under the Medicare Program the reasonable costs incurred by a provider in conducting, by contract with an educational institution, certain approved educational activities under a Post Graduate Nursing Program, and for other purposes.

S. 2598

At the request of Mr. KASTEN, the names of the Senator from Indiana [Mr. QUAYLE] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 2598, a bill to ensure that waste exported from the United States to foreign countries is managed in a manner so as to protect human health and the environment.

S. 2647

At the request of Mr. PELL, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 2647, a bill to amend the Higher Education Act of 1965 to reduce the default rate on student loans under that act, and for other purposes.

S. 2724

At the request of Mr. RIEGLE, the name of the Senator from Vermont [Mr. STAFFORD] was added as a cosponsor of S. 2724, a bill to amend the Export Administration Act of 1979.

S. 2759

At the request of Mr. SYMMS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2759, a bill to amend title XVIII of the Social Security Act to eliminate the reimbursement differential between hospitals in different areas.

SENATE JOINT RESOLUTION 343

At the request of Mr. ADAMS, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of Senate Joint Resolution 343, a joint resolution to designate the period commencing November 13, 1988, and ending on November 19, 1988, as "Filipino American National History Week."

SENATE JOINT RESOLUTION 348

At the request of Mr. REID, the names of the Senator from Rhode Island [Mr. Pell], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Senate Joint Resolution 348, a joint resolution to designate the week of February 5, 1989, through February 11, 1989, as "National Burn Awareness Week."

SENATE JOINT RESOLUTION 369

At the request of Mr. KERRY, the names of the Senator from Ohio [Mr. GLENN], the Senator from Vermont [Mr. LEAHY], the Senator from Illinois [Mr. SIMON], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of Senate Joint Resolution 369, a joint resolution to designate the period of September 17 through October 10, 1988, as "Coastweeks '88."

SENATE JOINT RESOLUTION 373

At the request of Mr. BYRD, the names of the Senator from Hawaii [Mr. INOUYE] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of Senate Joint Resolution 373, a joint resolution to designate the week beginning November 13, 1988, as "National Craniofacial Deformity Awareness Week."

SENATE CONCURRENT RESOLUTION 142

At the request of Mr. BOSCHWITZ, the name of the Senator from Connecticut [Mr. WEICKER] was added as a cosponsor of Senate Concurrent Resolution 142, a concurrent resolution congratulating Israel and Egypt on the 10th anniversary of the Camp David accords.

SENATE RESOLUTION 474—RELATIVE TO SOVIET ABM TREATY VIOLATIONS

Mr. WALLOP (for himself, Mr. DOLE, Mr. BYRD, Mr. LUGAR, Mr. NUNN, Mr. WARNER, Mr. BOREN, Mr. WILSON, Mr. HELMS, Mr. SYMMS, Mr. MCCLURE, Mr. KASTEN, Mr. MCCAIN, Mr. SIMPSON, Mr. KARNES, Mr. NICKLES, Mr. BUMPERS, and Mr. DECONCINI) submitted the following resolution; which was considered and agreed to:

S. RES. 474

Whereas the Representatives of the United States and the Union of Soviet Socialist Republics met in Geneva, Switzerland from August 24 to August 31 to conduct the third five-year review of the ABM Treaty as required by the provisions of that agreement.

Whereas the United States raised again its concerns about Soviet activities in actual or possible violation of the terms of the ABM Treaty, including but not limited to, the radar violations located at Krasnoyarsk and Gomel;

Whereas violations of arms control agreements damage the relations between the parties and undermine the integrity of the arms control process;

Whereas the Senate unanimously supported by a vote of 89-0 in Sec. 902 of the FY 1988/89 Department of Defense Authorization bill the President's position that the Krasnoyarsk radar is an "unequivocal violation" of the ABM Treaty and declared in S. Res. 94 by a vote of 93-2 that it represents an "important obstacle" to any future arms control agreements;

Whereas the Soviet Union gave no assurance at the Review Conference that it was prepared fully and without condition to correct its violations of the ABM Treaty, including the Krasnoyarsk radar;

Whereas the United States has made clear, in its unilateral statement of August 31, 1988 at the end of the ABM Treaty Review Conference, that "until the Krasnoyarsk radar is dismantled, it will continue to raise the issue of material breach and proportionate responses;"

Whereas, in that statement, the United States also made clear that "the continuing existence of the Krasnoyarsk radar makes it impossible to conclude any future arms agreements in the START or Defense and Space areas." Be it therefore

Resolved, That it is the sense of the Senate that the Senate:

(1) Strongly supports the continuation of settled national policy, reiterated in the August 31 unilateral statement, that unequivocal Soviet violations of the ABM Treaty, as exemplified by the radar at Krasnoyarsk, must be corrected before the conclusion of any future agreements on strategic arms.

(2) Urges the President to work with the Congress to develop appropriate, proportionate response options to the Krasnoyarsk radar and any other unequivocal ABM Treaty violations that would, if not corrected, deny us the essential benefits of the treaty and be detrimental to the U.S. security.

(3) Expresses its willingness to consider as soon as possible any such responses that might require legislative action.

AMENDMENTS SUBMITTED

MINIMUM WAGE RESTORATION ACT

KENNEDY AMENDMENT NO. 3043

(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to proposed by him to the bill (S. 837) to amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes; as follows:

At the end of the bill add the following new section:

SEC.□. Removal of exemption from maximum hour requirements for employee of independent wholesale or bulk distributors of petroleum products.

Section 7(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(b)) is amended by striking out paragraph (3).

TECHNICAL CORRECTIONS TO THE TAX ACT

BAUCUS (AND PACKWOOD) AMENDMENT NO. 3044

(Ordered to lie on the table.)

Mr. BAUCUS (for himself and Mr. PACKWOOD) submitted an amendment intended to be proposed by them to the bill (S. 2238) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes; as follows:

On page 758, strike lines 9 through 15.

On page 758, line 16, strike "(B)" the first place it appears and insert "(A)".

On page 758, line 19, strike "(C)" the first place it appears and insert "(B)".

On page 758, line 24, strike "(D)" the first place it appears and insert "(C)".

On page 759, line 1, strike "(E)" and insert "(D)".

On page 780, line 16, strike "Paragraph (2) of section" and insert "Section".

On page 780, line 18, strike "sentence" and insert "paragraph".

On page 780, line 19, insert "(3)" before "In".

On page 780, lines 19 and 20, strike "the corporation referred to in the preceding sentence" and insert "a qualified corporation".

On page 857, strike lines 17 through 19, and insert:

(13) Subparagraph (D) of section 621(f)(2) of the Reform Act is amended—

(A) by striking out "or reorganization", and

(B) by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, in applying section 382 (as so in effect), warrants shall not be treated as stock.".

On page 865, line 7, insert "(A)" after "(5)".

On page 865, line 9, strike "(A)" and insert "(i)".

On page 865, line 13, strike "(B)" and insert "(ii)".

On page 865, between lines 16 and 17, insert:

(B) The amendment made by subparagraph (A)(ii) shall not apply to any reorganization if before June 10, 1987—

(i) the board of directors of a party to the reorganization adopted a resolution to solicit shareholder approval for the transaction, or

(ii) the shareholders or the board of directors of a party to the reorganization approved the transaction.

On page 868, line 25, strike "June 11, 1987" and insert "June 22, 1988, except that such amendment shall not apply to any exchange pursuant to any reorganization for which a plan of reorganization was adopted before June 22, 1988".

On page 909, line 13, strike the end quotation marks.

On page 909, between lines 13 and 14, insert:

"(iii) REGULATIONS.—Under regulations, payments to the real estate investment trust under an agreement described in clause (ii) which relates to indebtedness incurred to acquire or carry real estate assets may be treated as income which qualifies under paragraph (2) and as security for purposes of paragraph (4)(A).".

On page 945, lines 14 and 15, strike "(in a taxable year beginning after December 31, 1986)".

On page 945, line 24, strike "October 16, 1987" and insert "December 31, 1987".

On page 974, strike lines 4 through 7, and insert:

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 806 of the Reform Act, except that section 806(e)(1) shall be applied by substituting "December 31, 1987" for "December 31, 1986". For purposes of section 806(e)(2) of the Reform Act—

On page 986, strike lines 14 through 19, and insert:

"(C) ELECTION MADE BY EACH MEMBER.—In the case of a parent-subsidiary controlled group, any election under this section shall be made separately by each member of such group."

On page 1013, between lines 7 and 8, insert:

(9) Section 831(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) LIMITATION ON USE OF NET OPERATING LOSSES.—For purposes of this part, except as provided in section 844, a net operating loss (as defined in section 172) shall not be carried—

"(A) to or from any taxable year for which the insurance company is not subject to the tax imposed by subsection (a), or

"(B) to any taxable year if, between the taxable year from which such loss is being carried and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by subsection (a)."

On page 1070, between lines 16 and 17, insert:

(16) Sections 406(c) and 407(c) of the 1986 Code are each amended—

(A) by striking out "subsections (a)(2) and (e) of section 402, and section 403(a)(2)" and inserting in lieu thereof "section 402(e)", and

(B) by striking out "OF CAPITAL GAIN PROVISIONS AND" in the headings thereof.

On page 1097, line 11, strike "Section 6652(l)(2)(B)" and insert "Section 6652(k)(2)(B)".

On page 1107, beginning with line 12, strike all through page 1108, line 9, and insert:

(34) Section 89(l)(2) of the 1986 Code is amended by striking out "6652(l)" and inserting in lieu thereof "6652(k)".

On page 1138, line 13, strike "the" and insert "the receipt of any distribution in liquidation in".

On page 1138, line 21, strike "liquidation occurs" and insert "distribution is received".

On page 1201, after line 24, insert:

(37)(A) Paragraph (2) of section 1295(b) of the 1986 Code is amended by adding at the end thereof the following new sentence: "To the extent provided in regulations, such an election may be made later than as required by the preceding sentence in cases where the company failed to make a timely election because it reasonably believed it was not a passive foreign investment company."

(B) The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of enactment of this Act.

On page 1209, between lines 6 and 7, insert:

(15) Section 861(a)(2)(C) of the 1986 Code is amended by striking out "section 243(d)" and inserting in lieu thereof "section 243(e)".

On page 1279, strike lines 3 through 8.

On page 1279, line 9, strike "(D)" and insert "(C)".

On page 1324, between lines 7 and 8, insert:

(21) Section 2652 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) EXECUTOR.—For purposes of this chapter, the term 'executor' has the meaning given such term by section 2203."

On page 1339, between lines 10 and 11, insert the following new subsections:

(s) NOTICE OF LIEN ON PERSONAL PROPERTY.—

(1) Subsection (f) of section 6323 of the 1986 Code is amended—

(A) by inserting ", except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State" after "situated" in paragraph (1)(A)(ii), and

(B) by adding at the end thereof the following new paragraph:

"(5) NATIONAL FILING SYSTEMS.—The filing of a notice of lien shall be governed solely by this title and shall not be subject to any other Federal law establishing a place or places for the filing of liens or encumbrances under a national filing system."

(2) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(t) EFFECT OF HONORING LEVY.—

(1) Subsection (d) of section 6332 of the 1986 Code is amended by inserting "and any other person" after "delinquent taxpayer".

(2) The amendment made by this subsection shall apply to levies issued after the date of the enactment of this Act.

(u) COLLECTION AFTER COMMENCEMENT OF JUDICIAL PROCEEDINGS.—

(1) The last sentence of section 6502(a) of the 1986 Code is amended to read as follows: "If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes enforceable."

(2) The amendment made by this subsection shall apply to levies issued after the date of the enactment of this Act.

On page 1352, between lines 11 and 12, insert:

(3) Section 1278(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) BASIS ADJUSTMENT.—The basis of any bond in the hands of the taxpayer shall be increased by the amount included in gross income pursuant to this subsection."

On page 1375, strike lines 1 through 11.

On page 1393, strike lines 11 through 13.

On page 1393, line 14, strike "(53)" and insert "(52)".

On page 1396, strike lines 16 through 23.

On page 1426, line 23, strike "distributees" and insert "corporations".

On page 1427, line 1, insert "which included the distributees" after "group".

On page 1427, lines 9 and 10, strike the commas.

On page 1431, strike lines 11 through 16, and insert:

"(3) SHORTER PERIOD WHERE CORPORATIONS NOT IN EXISTENCE FOR 5 YEARS.—If either of the corporations referred to in paragraph (1) was not in existence throughout the 5-year period referred to in paragraph (1), the period during which such corporation was in existence (or if both, the shorter of such periods) shall be substituted for such 5-year period."

On page 1436, between lines 18 and 19, insert the following new subsection:

(s) AMENDMENTS RELATED TO SECTION 10502 OF THE ACT.—

(1) Section 4093 of the 1986 Code is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN AVIATION FUEL SALES.—Under regulations prescribed by the Secretary, the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3))."

(2) Subparagraph (B) of section 6427(l)(3) of the 1986 Code (relating to no refund of Leaking Underground Storage Tank Trust Fund financing tax) is amended by inserting "(except as supplies for vessels or aircraft within the meaning of section 4221(d)(3))" after "aircraft".

On page 1441, strike lines 1 through 3 and insert:

"(I) the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over

On page 1441, beginning with line 20, strike out through page 1442, line 12, and insert:

"(D) CERTAIN SPUN-OFF PLANS NOT TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

"(ii) PLANS TRANSFERRED OUT OF CONTROLLED GROUPS.—A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

"(iii) PLANS TRANSFERRED OUT OF MULTIPLE EMPLOYER PLANS.—A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remaining after the spin-off which is also

maintained by another employer (or member of the same controlled group as such other employer) which maintain the plan in existence before the spin-off.

"(iv) TERMINATED PLANS.—A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

"(v) CONTROLLED GROUP.—For purposes of this subparagraph, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

On page 1443, between lines 15 and 16, insert:

(3)(A) Subparagraph (C) of section 412(l)(3) of the 1986 Code is amended—

(i) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(ii) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

(B) Subparagraph (B) of section 302(d)(3) of the Employee Retirement Income Security Act of 1974 is amended—

(i) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(ii) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

On page 1444, beginning with line 17, strike out all through page 1484, line 3.

On page 1493, beginning with line 14, strike through page 1494, line 5, and redesignate subtitles B, C, and D as subtitles A, B, and C, respectively.

On page 1536, line 17, strike "shall" and insert "may".

On page 1540, line 5, strike "(11)" and insert "(12)".

On page 1543, line 11, insert "(or if later the effective date of such rules)" after "plans".

On page 1546, line 23, insert "and to take into account any right of recovery (whether or not exercised) under section 2207B" after "applied".

On page 1551, strike lines 12 through 14 and insert:

"(II) has a fixed maturity date,".

On page 1551, line 24, insert "except in a case where such indebtedness is in default as to interest or principal," before "such indebtedness".

On page 1552, lines 1, 2, and 3, strike "(other than in a case where the indebtedness is in default as to interest or principal)".

On page 1555, line 16, insert "(or a revocable trust)" after "will".

On page 1556, line 9, strike the end quotation marks.

On page 1556, between lines 9 and 10, insert:

"(e) NO RIGHT OF RECOVERY AGAINST CHARITABLE REMAINDER TRUSTS.—No person shall be entitled to recover any amount by reason of this section from a trust to which section 664 applies (determined without regard to this section).".

On page 1556, between lines 13 and 14, insert:

(e) TREATMENT OF CONSIDERATION.—

(1) IN GENERAL.—Section 2036(c)(5) of the 1986 Code is amended to read as follows:

"(5) COORDINATION WITH SECTION 2043.—Rules similar to the rules under section 2043 shall apply for purposes of determining the adjustment for any consideration received."

(2) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study as to the appropriate adjustment for consideration to be taken into account under section 2036(c)(5) of the 1986 Code. The Secretary shall report the results of such study not later than January 1, 1990, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

On page 1556, line 14, strike "(e)" and insert "(f)".

On page 1557, between lines 4 and 5, insert:

(4) CORRECTION PERIOD.—If section 2036(c)(1) of the 1986 Code would (but for this paragraph) apply to any interest arising from a transaction entered into during the period beginning after December 17, 1987, and ending before January 1, 1990, such section shall not apply to such interest if during such period actions are taken as are necessary to have such transaction (and any such interest) included in the exceptions under section 2036(c)(6) of the 1986 Code (as added by subsection (b)).

On page 1622, after line 16, add the following new titles:

TITLE VII—ADDITIONAL CORRECTIONS AND MODIFICATIONS

Subtitle A—Provisions That Close Loopholes

SEC. 700. AMOUNT OF CORPORATE ESTIMATED TAX INSTALLMENT REDUCTION RECAPTURE INCREASED.

(a) IN GENERAL.—Section 6655(e)(1) of the 1986 Code (relating to lower required installment where annualized income installment or adjusted seasonal installment is less than amount determined under subsection (d)) is amended by striking out "90 percent" and inserting in lieu thereof "100 percent".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to installments required to be made after September 30, 1988.

SEC. 701. TREATMENT OF MODIFIED ENDOWMENT CONTRACTS.

(a) DISTRIBUTION RULES.—

(1) IN GENERAL.—Subsection (e) of section 72 of the 1986 Code (relating to amounts not received as annuities) is amended by adding at the end thereof the following new paragraph:

"(10) TREATMENT OF MODIFIED ENDOWMENT CONTRACTS.—

"(A) IN GENERAL.—Notwithstanding paragraph (5)(C), in the case of any modified endowment contract (as defined in section 7702A)—

"(i) paragraphs (2)(B) and (4)(A) shall apply, and

"(ii) in applying paragraph (4)(A), 'any person' shall be substituted for 'an individual'.

"(B) TREATMENT OF CERTAIN BURIAL CONTRACTS.—Notwithstanding subparagraph (A), paragraph (4)(A) shall not apply to any assignment (or pledge) of a modified endowment contract if such assignment (or pledge) is solely to cover the payment of expenses referred to in section 7702(e)(2)(C)(iii).

"(C) TREATMENT OF AMOUNTS RETAINED BY INSURER UNDER THE CONTRACT.—Any amount payable or borrowed under a modified endowment contract shall not be included in gross income under paragraph (2)(B)(i) to the extent such amount is retained by the insurer as a premium or other consideration paid for the contract or as principal or interest paid on a loan under the contract."

(2) TECHNICAL AMENDMENT.—Subparagraph (C) of section 72(e)(5) is amended by striking out "Except to the extent" and inserting in lieu thereof "Except as provided in paragraph (10) and except to the extent".

(b) ADDITIONAL TAX.—

(1) IN GENERAL.—Section 72 of the 1986 Code (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (v) as subsection (w) and by inserting after subsection (u) the following new subsection:

"(v) 10-PERCENT ADDITIONAL TAX FOR TAXABLE DISTRIBUTIONS FROM MODIFIED ENDOWMENT CONTRACTS.—

"(1) IMPOSITION OF ADDITIONAL TAX.—If any taxpayer receives any amount under a modified endowment contract (as defined in section 7702A), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

"(2) SUBSECTION NOT TO APPLY TO CERTAIN DISTRIBUTIONS.—Paragraph (1) shall not apply to any distribution—

"(A) made on or after the date on which the taxpayer attains age 59½,

"(B) which is attributable to the taxpayer's becoming disabled (within the meaning of subsection (m)(7)), or

"(C) which is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary."

(2) TECHNICAL AMENDMENT.—Subparagraph (C) of section 26(b)(2) of the 1986 Code is amended by striking out "or (q)" and inserting in lieu thereof "(q), or (v)".

(c) MODIFIED ENDOWMENT CONTRACT DEFINED.—

(1) IN GENERAL.—Chapter 79 of the 1986 Code is amended by inserting after section 7702 the following new section:

"SEC. 7702A. MODIFIED ENDOWMENT CONTRACT DEFINED.

"(a) GENERAL RULE.—For purposes of section 72, the term 'modified endowment contract' means any contract meeting the requirements of section 7702—

"(1) which—

"(A) is entered into on or after June 21, 1988, and

"(B) fails to meet the 7-pay test of subsection (b), or

"(2) which is received in exchange for a contract described in paragraph (1).

"(b) 7-PAY TEST.—For purposes of subsection (a), a contract fails to meet the 7-pay test of this subsection if the accumulated amount paid under the contract at any time during the 1st 7 contract years exceeds the sum of the net level premiums which would have been paid on or before such time if the contract provided for paid-up future benefits after the payment of 7 level annual premiums.

"(c) COMPUTATIONAL RULES.—

"(1) IN GENERAL.—Except as provided in this subsection, the determination under subsection (b) of the 7 level annual premiums shall be made—

"(A) as of the time the contract is issued, and

"(B) by applying the rules of section 7702(b)(2) and of section 7702(e) (other than paragraph (2)(C) thereof), except that—

"(i) the death benefit provided for the 1st contract year shall be deemed to be provided until the maturity date without regard to any scheduled reduction after the 1st 7 contract years, and

"(ii) except as otherwise provided by the Secretary, the mortality charges used in such determination shall be the mortality

charges specified in the prevailing commissioners' standard tables (as defined in section 807(d)(5)) as of the time the contract is issued or materially changed.

"(2) REDUCTION IN BENEFITS DURING 1ST 7 YEARS.—

"(A) IN GENERAL.—If there is a reduction in benefits under the contract within the 1st 7 contract years, this section shall be applied as if the contract had originally been issued at the reduced benefit level.

"(B) REDUCTIONS ATTRIBUTABLE TO NONPAYMENT OF PREMIUMS.—Any reduction in benefits attributable to the nonpayment of premiums due under the contract shall not be taken into account under subparagraph (A) if the benefits are reinstated within 180 days after the reduction in such benefits.

"(3) TREATMENT OF MATERIAL CHANGES.—

"(A) IN GENERAL.—If there is a material change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination under this section, for purposes of this section—

"(i) such contract shall be treated as a new contract entered into on the day on which such material change takes effect, and

"(ii) appropriate adjustments shall be made in determining whether such contract meets the 7-pay test of subsection (b) to take into account the cash surrender value under the contract.

"(B) TREATMENT OF CERTAIN INCREASES IN FUTURE BENEFITS.—For purposes of subparagraph (A), the term 'material change' includes any increase in future benefits under the contract. The preceding sentence shall not apply in the case of any increase—

"(i) which is attributable to the payment of premiums necessary to fund the lowest level of future benefits payable in the 1st 7 contract years or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, or

"(ii) which the Secretary provides in regulations is a de minimis increase which is not to be taken into account as a material change.

"(4) SPECIAL RULE FOR CONTRACTS WITH DEATH BENEFITS UNDER $10,000.—In the case of a contract—

"(A) which provides an initial death benefit of $10,000 or less, and

"(B) which requires at least 20 nondecreasing annual premium payments,

each of the 7 level annual premiums determined under subsection (b) (without regard to this paragraph) shall be increased by $75. For purposes of this paragraph, all contracts issued by the same insurer shall be treated as one contract.

"(d) DISTRIBUTIONS AFFECTED.—If a contract fails to meet the 7-pay test of subsection (b), such contract shall be treated as failing to meet such requirements only in the case of—

"(1) distributions during the contract year in which the failure takes effect and during any subsequent contract year, and

"(2) under regulations prescribed by the Secretary, distributions (not described in paragraph (1)) in anticipation of such failure.

For purposes of the preceding sentence, any distribution which is made within 2 years before the failure to meet the 7-pay test shall be treated as made in anticipation of such failure.

"(e) DEFINITIONS.—For purposes of this section—

"(1) AMOUNT PAID.—

"(A) IN GENERAL.—The term 'amount paid' means—

"(i) the premiums paid under the contract, reduced by

"(ii) amounts to which section 72(e) applies (other than amounts includible in gross income).

"(B) TREATMENT OF CERTAIN PREMIUMS RETURNED.—If, in order to comply with the requirements of subsection (b), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of such contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such contract year.

"(C) INTEREST RETURNED INCLUDIBLE IN GROSS INCOME.—Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

"(2) CONTRACT YEAR.—The term 'contract year' means the 12-month period beginning with the 1st month for which the contract is in effect, and each 12-month period beginning with the corresponding month in subsequent calendar years.

"(3) OTHER TERMS.—Except as otherwise provided in this section, terms used in this section shall have the same meaning as when used in section 7702."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 79 of the 1986 Code is amended by inserting after the item relating to section 7702 the following new item:

"Sec. 7702A. Modified endowment contract defined."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to contracts entered into on or after June 21, 1988.

(2) CERTAIN MATERIAL CHANGES TAKEN INTO ACCOUNT.—A contract entered into before June 21, 1988, shall be treated as entered into after such date if—

(A) on or after June 21, 1988, 1 or more of the future benefits under the contract are increased (or a qualified additional benefit is increased or added) and before June 21, 1988, the owner of the contract did not have a unilateral right under the contract to obtain such increase or addition without providing additional evidence of insurability, or

(B) the contract is converted after June 20, 1988, from a term life insurance contract to a life insurance contract providing coverage other than term life insurance coverage without regard to any right of the owner of the contract to such conversion.

(3) CERTAIN EXCHANGES PERMITTED.—In the case of a modified endowment contract which—

(A) is entered into after June 20, 1988, and before the date of the enactment of this Act, and

(B) is exchanged within 3 months after such date of enactment for a life insurance contract which meets the requirements of section 7702A(b),

the contract which is received in exchange for such contract shall not be treated as a modified endowment contract if gain (if any) is recognized on such exchange.

SEC. 702. REPEAL OF RULES PERMITTING LOSS TRANSFERS BY ALASKA NATIVE CORPORATIONS.

(a) GENERAL RULE.—Nothing in section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986)—

(1) shall allow any loss (or credit) of any corporation which arises after April 26, 1988, to be used to offset the income (or tax) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended, or

(2) shall allow any loss (or credit) of any corporation which arises on or before such date to be used to offset disqualified income (or tax attributable to such income) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended.

(b) EXCEPTION FOR NATIVE CORPORATIONS NOT TRANSFERRING LOSSES (OR CREDITS) BEFORE APRIL 26, 1988.—

(1) IN GENERAL.—Subsection (a) shall not apply to any loss (or credit) of any qualified corporation which arises before January 1, 1989, and which is used to offset income assigned (or attributable to property contributed) after April 26, 1988, and before January 1, 1989.

(2) $5,000,000 LIMITATION.—The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(j)(5)) to which paragraph (1) applies with respect to any qualified corporation shall not exceed $5,000,000. For purposes of this paragraph, a Native Corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 qualified corporation.

(3) QUALIFIED CORPORATION.—For purposes of this subsection, the term "qualified corporation" means any Native Corporation which was in existence on April 26, 1988, and any other corporation all the stock of which is owned directly by such Native Corporation if, on or before April 26, 1988, neither—

(A) the Native Corporation, nor

(B) any other corporation with respect to which the Native Corporation at any time owned directly all of the stock of such other corporation,

has engaged in any transaction which would allow any loss or credit (whether arising before, on, or after April 26, 1988) to be used in the manner described in subsection (a)(1).

(c) DISQUALIFIED INCOME DEFINED.—For purposes of subsection (a), the term "disqualified income" means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation all the stock of which is owned directly by a Native Corporation.

SEC. 703. MODIFICATION OF DISTILLED SPIRITS TAX CREDIT FOR FLAVORS CONTENT.

(a) IN GENERAL.—Subparagraph (B) of section 5010(c)(2) of the 1986 Code (defining flavors content) is amended by striking out the "and" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) alcohol derived from flavors distilled at a distilled spirits plant, and".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to distilled spirits withdrawn from bond after the date of the enactment of this Act.

SEC. 704. DENIAL OF DEDUCTION FOR CERTAIN RESIDENTIAL TELEPHONE SERVICE.

(a) GENERAL RULE.—Section 262 of the 1986 Code (relating to personal, living, and family expenses) is amended to read as follows:

"SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

"(a) GENERAL RULE.—Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

"(b) TREATMENT OF CERTAIN PHONE EXPENSES.—For purposes of subsection (a), in the case of an individual, any charge (including taxes thereon) for basic local telephone service with respect to the 1st telephone line provided to any residence of the taxpayer shall be treated as a personal expense."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1988.

SEC. 705. VALUATION TABLES.

(a) GENERAL RULE.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7520. VALUATION TABLES.

"(a) GENERAL RULE.—For purposes of this title, the value of any annuity, any interest for life or a term of years, or any remainder or reversionary interest shall be determined—

"(1) under tables prescribed by the Secretary, and

"(2) by using an interest rate (rounded to the nearest 2/10ths of 1 percent) equal to 120 percent of the Federal mid-term rate in effect under section 1274(d)(1) for the month in which the valuation date falls.

The taxpayer may elect to use such rate for either of the 2 months preceding the month in which the valuation date falls. In the case of transfers of more than 1 interest in the same property with respect to which such taxpayer is permitted to use the same rate under this subsection, such taxpayer shall use the same rate with respect to each interest.

"(b) TABLES.—

"(1) IN GENERAL.—The tables prescribed by the Secretary for purposes of subsection (a) shall contain valuation factors for a series of interest rate categories.

"(2) INITIAL TABLE.—Not later than the day 3 months after the date of the enactment of this section, the Secretary shall prescribe initial tables for purposes of subsection (a). Such tables may be based on the same mortality experience as used for purposes of section 2031 on the date of the enactment of this section.

"(3) REVISION FOR RECENT MORTALITY CHARGES.—Not later than December 31, 1989, the Secretary shall revise the initial tables prescribed for purposes of subsection (a) to take into account the most recent mortality experience available as of the time of such revision. Such tables shall be revised not less frequently than once each 10 years thereafter to take into account the most recent mortality experience available as of the time of the revision.

"(c) VALUATION DATE.—For purposes of this section, the term 'valuation date' means the date as of which the valuation is made.

"(d) TABLES TO INCLUDE FORMULAS.—For purposes of this section, the term 'tables' includes formulas."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7520. Valuation tables.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in cases where the valuation date on or after the 1st day of the 6th calendar month beginning after the date of the enactment of this Act.

Subtitle B—Substantive Provisions

PART I—CORRECTIONS AFFECTING AGRICULTURE

SEC. 706. TREATMENT OF CERTAIN RENTS UNDER SECTION 2032A.

(a) GENERAL RULE.—Subparagraph (A) of section 2032A(b)(5) of the 1986 Code (relating to special rules for surviving spouse) is amended by adding at the end thereof the following new sentence: "For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply with respect to rentals occurring after December 31, 1976.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.

SEC. 707. CERTAIN DISCHARGES OF INDEBTEDNESS NOT TREATED AS INCOME FOR PURPOSES OF SECTION 501(c)(12).

(a) IN GENERAL.—Section 501(c)(12) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) Subparagraph (A) shall be applied without taking into account any income received or accrued from the sale of notes or other obligations held in the Rural Development Insurance fund pursuant to section 1001 of the Omnibus Budget Reconciliation Act of 1986 (as in effect on January 1, 1987)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales before, on, or after the date of the enactment of this Act.

SEC. 708. ONE-YEAR DEFERRAL OF PROCEEDS FROM LIVESTOCK SOLD ON ACCOUNT OF DROUGHT.

(a) IN GENERAL.—Paragraph (1) of section 451(e) of the 1986 Code (relating to special rule for proceeds from livestock sold on account of drought) is amended by striking out "(other than livestock described in section 1231(b)(3))".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales or exchanges occurring after December 31, 1987.

SEC. 709. CERTAIN CASH WAGES PAID TO SEASONAL AGRICULTURAL LABORERS EXCLUDED FROM OASDI COVERAGE.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 209(h) of the Social Security Act is amended to read as follows:

"(2) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

"(A) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

"(B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that subparagraph (B) shall not apply with respect to any expenditures for agricultural labor performed by any employee described in section 13(a)(6)(C) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(C));".

(b) FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) of the 1986 Code (relating to wages) is amended to read as follows:

"(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

"(i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

"(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that clause (ii) shall not apply with respect to any expenditures for agricultural labor performed by any employee described in section 13(a)(6)(C) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(C));".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 9002 of the Omnibus Budget Reconciliation Act of 1987.

PART II—PENSION AND EMPLOYEE BENEFIT PROVISIONS

SEC. 710. PROVISIONS RELATING TO BENEFITS UNDER DISCRIMINATORY PLANS.

(a) PROVISIONS NOT TO APPLY TO CHURCH PLANS.—Section 89(i) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) CHURCH PLANS.—The term 'statutory employee benefit plan' shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term 'church' has the meaning given such term by section 3121(w)(3)(A), including a qualified church controlled organization (as defined in section 3121(w)(3)(B))."

(b) CAFETERIA PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—Section 125(c)(2)(C) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made."

SEC. 711. MODIFICATIONS OF DISCRIMINATION RULES APPLICABLE TO CERTAIN ANNUITY CONTRACTS.

(a) EXCLUDED EMPLOYEES.—The last sentence of section 403(b)(12)(A) of the 1986 Code is amended to read as follows: "Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week."

(b) SAMPLING.—In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.

SEC. 712. MINIMUM PARTICIPATION STANDARDS.

Section 401(a)(26) of the 1986 Code, as amended by this Act, is amended by redesignating subparagraph (H) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

"(H) SPECIAL RULE FOR CERTAIN POLICE OR FIREFIGHTERS.—

"(i) IN GENERAL.—An employer may elect to have this paragraph applied separately with respect to qualified public safety employees who are—

"(I) policemen, or

"(II) firemen.

"(ii) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this subparagraph, the term 'qualified public safety employee' means any full-time employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision."

SEC. 713. CLARIFICATION OF TREATMENT OF JOINT AND SURVIVOR ANNUITIES UNDER QTIP RULES.

(a) ESTATE TAX.—Paragraph (7) of section 2056(b) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) TREATMENT OF SURVIVOR ANNUITIES.—In the case of an annuity where only the surviving spouse has the right to receive payments before the death of such surviving spouse—

"(i) the interest of such surviving spouse shall be treated as a qualifying income interest for life, and

"(ii) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by section 2001.

An election under clause (ii), once made, shall be irrevocable."

(b) GIFT TAX.—Subsection (f) of section 2523 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF JOINT AND SURVIVOR ANNUITIES.—In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die—

"(A) the donee spouse's interest shall be treated as a qualifying income interest for life,

"(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

"(C) paragraph (5) and section 2519 shall not apply to the donor spouse's interest in the annuity, and

"(D) if the donee spouse dies before the donor spouse, no amount shall be includible in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection—

(A) the amendment made by subsection (a) shall apply with respect to decedents dying after December 31, 1981, and

(B) the amendment made by subsection (b) shall apply to transfers after December 31, 1981.

(2) NOT TO APPLY TO EXTENT INCONSISTENT WITH PRIOR RETURN.—In the case of any estate or gift tax return filed before the date of the enactment of this Act, the amendments made by this section shall not apply to the extent such amendments would be inconsistent with the treatment of the annuity on such return unless the executor or donor (as the case may be) otherwise elects under this paragraph before the day 2 years after the date of the enactment of this Act.

(3) EXTENSION OF TIME FOR ELECTION OUT.—The time for making an election under section 2056(b)(7)(C)(ii) or 2523(f)(6)(B) of the 1986 Code (as added by this subsection) shall not expire before the day 2 years after the date of the enactment of this Act (and, if such election is made within the time permitted under this paragraph, the requirement of such section 2056(b)(7)(C)(ii) that it be made on the return shall not apply).

SEC. 714. RURAL TELEPHONE COOPERATIVES PERMITTED TO HAVE QUALIFIED CASH OR DEFERRED ARRANGEMENTS.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 401(k) of the 1986 Code (relating to cash or deferred arrangements) are each amended by striking out "or a rural electric cooperative plan" and inserting in lieu thereof "or a rural cooperative plan".

(b) RURAL COOPERATIVE PLAN DEFINED.—

(1) Paragraph (7) of section 401(k) of the 1986 Code (as amended by title I) is amended to read as follows:

"(7) RURAL COOPERATIVE PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'rural cooperative plan' means any pension plan—

"(i) which is a defined contribution plan (as defined in section 414(i)), and

"(ii) which is established and maintained by a rural cooperative.

"(B) RURAL COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term 'rural cooperative' means—

"(i) any organization which—

"(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

"(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

"(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

"(iii) a cooperative telephone company described in section 501(c)(12), and

"(iv) an organization which is a national association of organizations described in clause (i), (ii), or (iii)."

(2) Subparagraph (B) of section 401(k)(4) of the 1986 Code (as amended by title I) is amended by striking out "rural electric cooperative plan" and inserting in lieu thereof "rural cooperative plan".

(c) AMENDMENTS TO SECTION 457.—Section 457 of the 1986 Code (as amended by section 1107 of the Reform Act) is amended by striking out "rural electric cooperative plan" in subsection (c)(2) and inserting in lieu thereof "rural cooperative plan".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 715. EMPLOYEE LEASING.

Section 414(n)(6) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) DE MINIMIS RULE.—

"(i) IN GENERAL.—In the case of a recipient—

"(I) which has no top-heavy plans (within the meaning of section 416(g)), and

"(II) which uses the services of persons other than employees for less than 10 percent of such recipient's total workload, any leased employee described in clause (ii) shall not be treated as an employee of such recipient.

"(ii) LEASED EMPLOYEES TO WHOM SUBPARAGRAPH APPLIES.—A leased employee is described in this clause if—

"(I) the leased employee did not perform 3,000 or more hours of service for the recipient in any 2-consecutive plan year period beginning after 1986, and

"(II) did not perform services for the recipient within the same geographic area at any time during the plan year preceding any period referred to in subclause (I)."

SEC. 716. SECTION 415 LIMITATION FOR STATE AND LOCAL PLANS.

(a) MODIFIED LIMITATIONS.—Section 415(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULE FOR STATE AND LOCAL GOVERNMENT PLANS.—

"(A) LIMITATION TO EQUAL ACCRUED BENEFIT.—In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

"(B) QUALIFIED PARTICIPANT.—For purposes of this paragraph, the term 'qualified participant' means a participant who first became a participant in the plan maintained by the employer before January 1, 1990.

"(C) ELECTION.—This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the first plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)) applied without regard to paragraph (2)(F)."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this subsection apply to years beginning after December 31, 1982.

(2) ELECTION.—Section 415(b)(10)(C) of the 1986 Code (as added by paragraph 1) shall not apply to any year beginning before January 1, 1990.

SEC. 717. CHURCH SELF-FUNDED DEATH BENEFIT PLANS TREATED AS LIFE INSURANCE.

(a) IN GENERAL.—Section 7702 of the 1986 Code (defining life insurance contract) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) CERTAIN CHURCH SELF-FUNDED DEATH BENEFIT PLANS TREATED AS LIFE INSURANCE.—

"(1) IN GENERAL.—In determining whether any plan or arrangement described in paragraph (2) is a life insurance contract, the requirement of subsection (a) that the contract be a life insurance contract under applicable law shall not apply.

"(2) DESCRIPTION.—For purposes of this subsection, a plan or arrangement is described in this paragraph if—

"(A) such plan or arrangement provides for the payment of benefits by reason of the death of the individual covered under such plan or arrangement, and

"(B) such plan or arrangement is provided by a church for the benefit of its employees and their beneficiaries, directly or through an organization described in section 414(e)(3)(A) or an organization described in section 414(e)(3)(B)(ii).

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) CHURCH.—The term 'church' means a church or a convention or association of churches.

"(B) EMPLOYEE.—The term 'employee' includes an employee described in section 414(e)(3)(B)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 221(a) of the Tax Reform Act of 1984.

SEC. 718. STUDY OF EFFECT OF MINIMUM PARTICIPATION RULE ON EMPLOYERS REQUIRED TO PROVIDE CERTAIN RETIREMENT BENEFITS.

(a) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the application of section 401(a)(26) of the Internal Revenue Code of 1986 to Government contractors who—

(1) are required by Federal law to provide certain employees specified retirement benefits, and

(2) establish a separate plan for such employees while maintaining a separate plan for employees who are not entitled to such benefits.

Such study shall consider the Federal requirements with respect to employee benefits for employees of Government contractors, whether a special minimum participation rule should apply to such employees, and methods by which plans may be modified to satisfy minimum participation requirements.

(b) REPORT.—The Secretary of the Treasury or his delegate shall report the results of the study under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than September 1, 1989.

SEC. 719. PROHIBITION ON COLLECTIBLES NOT TO INCLUDE STATE COINS.

(a) IN GENERAL.—Paragraph (3) of section 408(m) of the 1986 Code is amended to read as follows:

"(3) EXCEPTION FOR CERTAIN COINS.—In the case of an individual retirement account, paragraph (2) shall not apply to—

"(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

"(B) any silver coin described in section 5112(e) of title 31, or

"(C) any coin issued under the laws of any State."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to acquisitions after the date of the enactment of this Act.

SEC. 720. 1-YEAR DELAY IN DISTRIBUTION REQUIREMENT FOR GOVERNMENT AND TAX-EXEMPT PLANS.

In the case of a plan maintained by—

(1) a governmental plan (within the meaning of section 414(d) of the 1986 Code), or

(2) an organization described in section 501(c)(3) of the 1986 Code which is exempt from tax under section 501(a) of such Code,

the requirement of section 401(a)(9)(C) of such Code (as in effect after the amendment made by section 1121(b) of the Reform Act) or any provision determined by reference to such section shall not apply to any year beginning before January 1, 1990.

SEC. 721. APPLICATION OF FUNDING RULES TO MULTIPLE EMPLOYER PLANS.

(a) IN GENERAL.—Paragraph (4) of section 413(c) of the 1986 Code is amended to read as follows:

"(4) FUNDING.—

"(A) IN GENERAL.—In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan.

"(B) OTHER PLANS.—In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year of the plan beginning after the date of enactment of the Technical Corrections Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary."

(b) DEDUCTION LIMITATIONS.—Paragraph (6) of section 413(c) of the 1986 Code is amended to read as follows:

"(6) DEDUCTION LIMITATIONS.—

"(A) In the case of a plan established after December 31, 1988, each applicable limitation provided by section 404(a) shall be determined as if each employer were maintaining a separate plan.

"(B) OTHER PLANS.—

"(i) IN GENERAL.—In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan.

"(ii) SPECIAL RULE.—If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary."

(c) CONFORMING AMENDMENT.—Section 413(c) of the 1986 Code is amended by striking out the last sentence and by inserting after paragraph (6) the following new paragraph:

"(7) ALLOCATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary.

"(B) ASSET AND LIABILITIES OF PLAN.—For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan."

(d) EFFECTIVE DATE.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.

SEC. 722. WITHDRAWAL LIABILITY OF MULTIEMPLOYER PLANS.

(a) STUDY.—

(1) IN GENERAL.—The Pension Benefit Guaranty Corporation shall complete the study required by section 412(a)(1)(B) of the Multiemployer Pension Plan Amendments Act of 1980 (relating to union-mandated withdrawal from multiemployer pension plans) and shall report the results of such study to Congress not later than March 1, 1989.

(2) FACTORS CONSIDERED.—The study under paragraph (1) shall include an analysis of—

(A) the effect of union-mandated withdrawals on employer withdrawal liability, and

(B) whether employer liability should be initiated by an illegal strike or illegal bargaining by an employee representative.

(b) PAYMENT OF WITHDRAWAL LIABILITY.—Notwithstanding any other provision of law, in the case of any employer withdrawal liability under title IV of the Employee Retirement Income Security Act of 1974 which is related directly or indirectly to striking or picketing in violation of the National Labor Relations Act (as determined by the National Labor Relations Board) and which—

(1) has not been paid before September 8, 1988, or

(2) arises on or after such date and before January 1, 1990,

shall not be payable before January 1, 1990.

SEC. 723. STUDY OF TREATMENT OF CERTAIN TECHNICAL PERSONNEL.

The Secretary of the Treasury or his delegate shall conduct a study of the treatment provided by section 1706 of the Reform Act (relating to treatment of certain technical personnel). The report of such study shall be submitted not later than September 1, 1989, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART III—EXEMPT ORGANIZATIONS

SEC. 724. CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

Section 1834 of the Reform Act is amended by adding at the end thereof the following new sentence: "The amendment made by this section shall apply to games of chance conducted after October 22, 1986, in taxable years ending after such date".

SEC. 725. PURCHASE OF INSURANCE BY COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (A) of section 501(e)(1) of the 1986 Code is amended by inserting "(including the purchasing of insurance on a group basis)" after "purchasing".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to purchases before, on, or after the date of the enactment of this Act.

SEC. 726. DONATED CARGO EXEMPT FROM HARBOR MAINTENANCE TAX.

(a) GENERAL RULE.—Section 4462 of the 1986 Code (relating to definitions and special rules) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) EXEMPTION FOR HUMANITARIAN AND DEVELOPMENT ASSISTANCE CARGOS.—No tax shall be imposed under this subchapter on any nonprofit organization or cooperative for cargo which is owned or financed by such nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in humanitarian or development assistance overseas."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on April 1, 1987.

SEC. 727. CERTAIN EDUCATIONAL INSTITUTIONS EXEMPT FROM USER FEES ON PERMITS FOR INDUSTRIAL USE OF SPECIALLY DENATURED DISTILLED SPIRITS.

(a) IN GENERAL.—Section 5276 of the 1986 Code (relating to occupational tax) is amended by adding at the end thereof the following new subsection:

"(c) EXEMPTION FOR CERTAIN EDUCATIONAL INSTITUTIONS.—Subsection (a) shall not apply with respect to any scientific university, college of learning, or institution of scientific research which—

"(1) is issued a permit under section 5271(a)(2), and

"(2) with respect to any calendar year during which such permit is in effect, procures less than 25 gallons of specially denatured distilled spirits for experimental or research use but not for consumption (other than organoleptic tests) or sale."

(b) CONFORMING AMENDMENT.—Section 5276(a) of the 1986 Code is amended by striking out "A permit" and inserting in lieu thereof "Except as provided in subsection (c), a permit".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1989.

SEC. 728. TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF AN INSTITUTION OF HIGHER EDUCATION.

(a) IN GENERAL.—Section 170 of the 1986 Code is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF INSTITUTIONS OF HIGHER EDUCATION.—

"(1) IN GENERAL.—For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

"(2) AMOUNT DESCRIBED.—For purposes of paragraph (1), an amount is described in this paragraph if—

"(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

"(i) which is described in subsection (b)(1)(A)(ii), and

"(ii) which is an institution of higher education (as defined in section 3304(f)), and

"(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years beginning after December 31, 1983.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of section 170(m) of the 1986 Code (as added by subsection (a)) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.

PART IV—ADMINISTRATIVE PROVISIONS

SEC. 729. CLARIFICATION OF MEANING OF MANUFACTURE UNDER TRUCK EXCISE TAX.

(a) IN GENERAL.—Paragraph (1) of section 4052(a) of the 1986 Code (defining first retail sale) is amended by striking out "manufacture, production" and inserting in lieu thereof "production, manufacture".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1988.

SEC. 730. AUTHORITY TO PRESCRIBE TOLERANCES FOR THE VOLUME OF WINE IN BOTTLES FOR PURPOSES OF THE EXCISE TAX ON WINE.

(a) IN GENERAL.—Section 5041 of the 1986 Code (relating to imposition and rate of tax on wine) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) TOLERANCES.—Where the Secretary finds that the revenue will not be endangered thereby, he may by regulation prescribe tolerances (but not greater than ½ of 1 percent) for bottles and other containers, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a bottle or other container are within the limit of the applicable tolerance prescribed."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wine removed after December 31, 1988.

SEC. 731. WHOLESALE DISTRIBUTORS TO ADMINISTER CLAIMS FOR REFUND OF GASOLINE TAX.

(a) IN GENERAL.—Subsection (a) of section 6416 of the 1986 Code (relating to certain taxes and services) is amended by adding at the end thereof the following new paragraph:

"(4) WHOLESALE DISTRIBUTORS TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

"(A) IN GENERAL.—For purposes of this subsection, a wholesale distributor who purchases any product on which tax imposed by section 4081 has been paid and who sells the product to its ultimate purchaser shall be treated as the person (and the only person) who paid such tax.

"(B) WHOLESALE DISTRIBUTOR.—For purposes of subparagraph (A), the term 'wholesale distributor' has the meaning given such term by section 4092(b)(2) (determined by substituting 'any product taxable under section 4081' for 'a taxable fuel' therein)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuel sold by wholesale distributors (as defined in section 6416(a)(4)(B) of the 1986 Code, as added by this section) after September 30, 1988.

SEC. 732. ELECTION TO BE TREATED AS QUALIFIED ELECTING FUND TO BE MADE BY TAXPAYER.

(a) GENERAL RULE.—Section 1295 of the 1986 Code (defining qualified electing fund) is amended to read as follows:

"SEC. 1295. QUALIFIED ELECTING FUND.

"(a) GENERAL RULE.—For purposes of this part, any passive foreign investment company shall be treated as a qualified electing fund with respect to the taxpayer if—

"(1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and

"(2) such company complies with such requirements as the Secretary may prescribe for purposes of—

"(A) determining the ordinary earnings and net capital gain of such company, and

"(B) otherwise carrying out the purposes of this subpart.

"(b) ELECTION.—

"(1) IN GENERAL.—A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

"(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 1291(d) of the 1986 Code (as amended by title I) is amended by striking out "for each" in the material preceding subparagraph (A) and inserting in lieu thereof "with respect to the taxpayer for each".

(2) Subparagraphs (A)(i) and (B)(i) of section 1291(d)(2) of the 1986 Code (as amended by title I) are each amended by striking out "for a taxable year" and inserting in lieu thereof "with respect to the taxpayer for a taxable year".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in the amendments made by section 1235 of the Reform Act.

(2) TIME FOR MAKING ELECTION.—The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of the enactment of this Act.

SEC. 733. ELECTION TO CLAIM CERTAIN UNEARNED INCOME OF CHILD ON PARENT'S RETURN.

(a) IN GENERAL.—Section 6012 of the 1986 Code (relating to persons required to make returns of income) is amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following new subsection:

"(e) ELECTION TO CLAIM CERTAIN UNEARNED INCOME OF CHILD ON PARENT'S RETURN.—

"(1) IN GENERAL.—Any child who—

"(A) has only qualified unearned income for the taxable year,

"(B) such unearned income is more than $500 and less than $5,000, and

"(C) the parent of such child (as determined under section 1(i)(5)) elects to claim such income on his return,

shall not be required to file a return under this section.

"(2) NO ELECTION IF ESTIMATED TAXES PAID IN CHILD'S NAME.—Paragraph (1) shall not apply in any taxable year in which estimated tax payments for such year are made in the name and TIN of the child.

"(3) QUALIFIED UNEARNED INCOME.—For purposes of this section, the term 'qualified unearned income' means—

"(A) interest payments,

"(B) dividend payments, and

"(C) Alaska Permanent Fund dividends.

"(4) INCOME INCLUDED IN PARENT'S GROSS INCOME.—In the case of any parent making an election under this subsection, any qualified unearned income of the child for the taxable year shall be included in such parent's gross income for such year (and not in such child's gross income) in an amount equal to the excess (if any) of—

"(A) such qualified unearned income, over

"(B) the lesser of—

"(i) $500, or

"(ii) the taxable portion of such qualified unearned income.

"(5) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out the purposes of this subsection."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

SEC. 734. REPORT ON THE SMALL BUSINESS INNOVATION RESEARCH PROGRAM.

Subsection (a) of section 6 of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638, note) is amended by striking out "December 31, 1988" and inserting in lieu thereof "July 1, 1989".

SEC. 735. EXCHANGE OF INFORMATION.

Clause (i) of section 6103(b)(5)(B) of the 1986 Code (defining State) is amended by striking out "2,000,000" and inserting in lieu thereof "250,000".

SEC. 736. STUDY ON HEALTH CARE COSTS RESULTING FROM SMOKING.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall, in consultation with the Surgeon General of the Public Health Service, conduct an ongoing study of—

(1) the public and private health care costs incurred (with respect to smokers, their spouses, and others) as a result of cigarette smoking in the United States,

(2) the incidence of cigarette smoking in the United States by adults and by teenage and younger children, and

(3) the impact of the rate of the excise tax imposed by section 5701 of the Internal Revenue Code of 1986 on cigarette smoking by adults and by teenage and younger children.

(b) REPORTS.—Reports of the study required by subsection (a) shall be submitted every 2 years, with the 1st such report to be submitted by January 1, 1989. Each such report shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART V—TAX-EXEMPT BONDS

SEC. 737. AMENDMENT TO MORTGAGE BOND PURCHASE PRICE REGULATIONS.

The Secretary of the Treasury or his delegate shall amend the regulations relating to mortgage bond purchase price requirements, with respect to any lease with a remaining term of at least 35 years and a specified ground rent for at least the first 10 years of such term but not for the entire term, to provide for a capitalized value of such lease equal to the present value of the current ground rent projected over the remaining term of the lease and discounted at 3 percent or such other discount rate as the Secretary establishes. If such amendment is not made before the date of the enactment of this Act, such regulations shall be considered to include such amendment with respect to bonds issued after such date.

SEC. 738. APPLICATION OF SECURITY INTEREST TEST TO BOND FINANCING OF HAZARDOUS WASTE CLEAN-UP ACTIVITIES.

Before January 1, 1989, the Secretary of the Treasury or his delegate shall issue guidance concerning the application of the private security or payment test under section 141(b)(2) of the Internal Revenue Code of 1986 to tax-exempt bond financing by State and local governments of hazardous waste clean-up activities conducted by such governments where some of the activities occur on privately owned land.

SEC. 739. CALCULATION OF INCOME LIMITS FOR QUALIFIED MORTGAGE BOND FINANCED HOMES IN HIGH HOUSING COST AREAS.

(a) IN GENERAL.—Section 143(f) of the 1986 Code (relating to income requirements) is amended by adding at the end thereof the following new paragraph:

"(5) ADJUSTMENT OF INCOME REQUIREMENT BASED ON RELATION OF HIGH HOUSING COSTS TO INCOME.—

"(A) IN GENERAL.—If the residence (for which financing is provided under the issue) is located in a high housing cost area, the percentage described in this paragraph shall be determined under subparagraph (B) and without regard to paragraph (4)(B).

"(B) INCOME REQUIREMENTS FOR RESIDENCES IN HIGH HOUSING COST AREA.—The percentage determined under this subparagraph for a residence located in a high housing cost area is the percentage (not greater than 140 percent) equal to the product of—

"(I) 115 percent, and

"(II) the amount by which the housing cost/income ratio for such area exceeds 0.2.

"(C) HIGH HOUSING COST AREAS.—For purposes of this paragraph, the term 'high housing cost area' means any statistical area for which the housing cost/income ratio is greater than 1.2.

"(D) HOUSING COST/INCOME RATIO.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'housing cost/income ratio' means, with respect to any statistical area, the number determined by dividing—

"(I) the applicable housing price ratio for such area, by

"(II) the ratio which the area median gross income for such area bears to the median gross income for the United States.

"(ii) APPLICABLE HOUSING PRICE RATIO.—For purposes of clause (i), the applicable housing price ratio for any area is the new housing price ratio or the existing housing price ratio, whichever results in the housing cost/income ratio being closer to 1.

"(iii) NEW HOUSING PRICE RATIO.—The new housing price ratio for any area is the ratio which—

"(I) the average area purchase price (as defined in subsection (e)(2)) for residences described in subsection (e)(3)(A) which are located in such area bears to

"(II) the average purchase price (determined in accordance with the principles of subsection (e)(2)) for residences so described which are located in the United States.

"(iv) EXISTING HOUSING PRICE RATIO.—The existing housing price ratio for any area is the ratio determined in accordance with clause (iii) but with respect to residences described in subsection (e)(3)(B)."

(b) CONFORMING AMENDMENT.—Section 143(f)(1) of the 1986 Code is amended by striking out "whose family income is 115 percent or less of the applicable median family income" and inserting in lieu thereof "whose family income is the greater of—

"(A) 115 percent or less of the applicable median family income, or

"(B) the percentage described in paragraph (5)."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to bonds issued, and nonissued bond amounts elected, after December 31, 1988.

(2) SPECIAL RULES RELATING TO CERTAIN REQUIREMENTS AND REFUNDING BONDS.—In the case of a bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before January 1, 1989, the amendments made by this section shall apply to financing provided after the date of issuance of the refunding issue.

SEC. 740. TAX-EXEMPT FINANCING FOR CERTAIN RAIL FACILITIES.

(a) IN GENERAL.—Subsection (a) of section 142 of the 1986 Code (relating to exempt facility bonds) is amended—

(1) by striking out "or" at the end of paragraph (9),

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following new paragraph:

"(11) high-speed intercity rail facilities."

(b) DEFINITION AND SPECIAL RULES FOR HIGH-SPEED INTERCITY RAIL FACILITIES.—

(1) IN GENERAL.—Section 142 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(i) HIGH-SPEED INTERCITY RAIL FACILITIES.—

"(1) For purposes of subsection (a)(11), the term 'high-speed intercity rail facilities' means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B)) using vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

"(2) ELECTION BY NONGOVERNMENTAL OWNERS.—A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim—

"(A) any deduction under section 167 or 168, and

"(B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

"(3) USE OF PROCEEDS.—A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue."

(2) USE OF FACILITIES.—Subsection (c) of section 142 of the 1986 Code (relating to special rules for airport, docks and wharves, and mass commuting facilities) is amended—

(A) by striking out "paragraph (1), (2), or (3) of subsection (a)" each place it appears in paragraphs (1) and (2) thereof and inserting in lieu thereof "paragraph (1), (2), (3) or (11) of subsection (a)", and

(B) by striking out "AND MASS COMMUTING FACILITIES" in the heading thereof and inserting in lieu thereof "MASS COMMUTING

FACILITIES AND HIGH-SPEED INTERCITY RAIL FACILITIES".

(3) PARTIAL EXCLUSION FROM VOLUME CAP.—Paragraph (3) of section 146(g) of the 1986 Code (relating to an exception for certain bonds) is amended—

(A) by striking out "and" at the end of paragraph (2),

(B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and

(C) by adding at the end thereof the following new paragraph:

"(3) 75 percent of any exempt facility bond issued as part of an issue described in paragraph (11) of section 142(a) (relating to high-speed intercity rail facilities."

(4) LIMITATION REMOVED ON USE OF BOND PROCEEDS FOR LAND ACQUISITION.—Paragraph (3) of section 147(c) of the 1986 Code (relating to limitation on use for land acquisition) is amended by inserting "high-speed intercity rail facility" after "mass commuting facility" each place it appears.

(5) SPECIAL RULE FOR PUBLIC APPROVAL.—Paragraph (3) of section 147(f) of the 1986 Code (relating to public approval required for private activity bonds) is amended—

(A) by inserting "or high-speed intercity rail facilities" after "airport" each place it appears, and

(B) by inserting "OR HIGH-SPEED INTERCITY RAIL FACILITIES" after "AIRPORTS" in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of enactment of this Act.

SEC. 741. RULES RELATING TO REBATE ON EARNINGS ON BONA FIDE DEBT SERVICE FUND.

(a) NO REBATE WHERE EARNINGS DO NOT EXCEED $100,000.—Clause (ii) of section 148(f)(4)(A) of the 1986 Code is amended by striking "unless the issuer otherwise elects,".

(b) $100,000 LIMIT NOT TO APPLY TO CERTAIN ISSUES.—Subparagraph (A) of section 148(f)(4) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue."

(c) EFFECTIVE DATE; SPECIAL RULES.—

(1) IN GENERAL.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

(2) ELECTION FOR OUTSTANDING BONDS.—Any issue of bonds other than private activity bonds outstanding as of the date of the enactment of this Act shall be allowed a 1-time election to apply the amendments made by subsection (b) to amounts deposited after such date in bona fide debt service funds of such bonds.

(3) DEFINITION OF PRIVATE ACTIVITY BOND.—For purposes of this section and the last sentence of section 148(f)(4)(A) of the 1986 Code (as added by subsection (b)), the term 'private activity bond' shall include any qualified 501(c)(3) bond (as defined under section 145 of the 1986 Code).

PART VI—MISCELLANEOUS PROVISIONS

SEC. 741. APPLICATION OF NET OPERATING LOSS LIMITATIONS TO BANKRUPTCY REORGANIZATIONS.

(a) TIME FOR DETERMINING WHETHER OWNERSHIP CHANGE OCCURS.—Section 621(f)(5) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new sentence: "The determination as to whether an ownership change has occurred during the period beginning January 1, 1987, and ending on the final settlement of any reorganization or proceeding described in the preceding sentence shall be redetermined as of the time of such final settlement."

(b) ELECTION TO HAVE NEW RULES APPLY.—Section 621(f)(5) of the Tax Reform Act of 1986 is amended by striking out "In" and inserting in lieu thereof "Unless the taxpayer elects not to have the provisions of this paragraph apply, in".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 621(f)(5) of the Tax Reform Act of 1986.

SEC. 742. DEFINITION OF LARGE BANK.

(a) IN GENERAL.—Paragraph (2) of section 585(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"If all the stock of a member of a parent-subsidiary controlled group is held by such group, is sold to one or more unrelated persons, the taxable years for which such member was treated as a large bank under subparagraph (B) by reason of membership in such group shall not be taken into account under this paragraph for taxable years beginning after such sale."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 901(a)(2) of the Reform Act.

SEC. 743. INTEREST EARNED BY BROKERS OR DEALERS NOT TAKEN INTO ACCOUNT AS PERSONAL HOLDING COMPANY INCOME.

(a) IN GENERAL.—Paragraph (1) of section 543(a) of the 1986 Code is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and" and by adding at the end thereof the following new subparagraph:

"(D) interest received by a broker or dealer (within the meaning of section 3(a)(4) or (5) of the Securities and Exchange Act of 1934) in connection with—

"(i) any securities or money market instruments held as property described in section 1221(1),

"(ii) margin accounts, or

"(iii) any financing for a customer secured by securities or money market instruments."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to interest received after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 744. TREATMENT OF CERTAIN INSTRUMENTS UNDER FOREIGN CURRENCY RULES.

(a) GENERAL RULE.—Clause (iii) of section 988(c)(1)(B) of the 1986 Code (as amended by title I) is amended by striking out "unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year".

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 988(a) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) APPLICATION OF SUBPARAGRAPH (B) IN THE CASE OF CERTAIN TRADERS.—In the case of any instrument—

"(i) which would be marked to market under section 1256 if held on the last day of the taxable year, and

"(ii) which was entered into or acquired by the taxpayer in the active conduct of the trade or business of trading such instruments,

to the extent provided in regulations, subparagraph (B) shall be applied without regard to the requirement that the instrument not be part of a straddle and without regard to the identification requirement contained therein."

(2) Paragraph (1) of section 988(d) of the 1986 Code is amended by striking out the second sentence and inserting in lieu thereof the following: "For purposes of the preceding sentence, the term 'section 988 transaction' shall not include any transaction with respect to which an election is made under subsection (a)(1)(B)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to forward contracts, future contracts, options, and similar financial instruments entered into or acquired after September 8, 1988.

SEC. 745. DUAL RESIDENT COMPANIES.

(a) GENERAL RULE.—In the case of a transaction which—

(1) involves the transfer after the date of the enactment of this Act by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

(2) qualifies, pursuant to Revenue Ruling 87-27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.1502-19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

(i) be reduced by the net amount of any such income, and

(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

(2) LIMITATION.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

(3) BASIS ADJUSTMENTS NOT APPLICABLE.—To the extent paragraph (1) applies to any item of income, there shall be no increase in

basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

(4) RECOGNITION OF GAIN.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

(A) the fair market value of the property transferred, over

(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

(c) DEFINITIONS.—For purposes of this section—

(1) COMMON PARENT.—The term "common parent" means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

(2) QUALIFIED EXCESS LOSS ACCOUNT.—The term "qualified excess loss account" means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

(A) to taxable years beginning before January 1, 1988, and

(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.

The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

(3) NET AMOUNT.—The net amount of any item of income is the amount of such income reduced by allocable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

(4) SECOND SAME COUNTRY CORPORATION MAY BE TREATED AS DOMESTIC CORPORATION IN CERTAIN CASES.—If—

(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph,

such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a)).

SEC. 746. TREATMENT OF INSURANCE COMPANIES UNDER CHAIN DEFICIT RULE.

(a) IN GENERAL.—Subparagraph (B) of section 952(c)(1) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(vii) SPECIAL RULES FOR INSURANCE INCOME.—

"(I) IN GENERAL.—An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

"(II) SPECIAL RULES FOR AFFILIATED GROUPS.—In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 1221(f) of the Reform Act.

SEC. 747. INVESTMENT IN QUALIFIED CARIBBEAN BASIN COUNTRIES.

(a) IN GENERAL.—Subparagraph (B) of section 936(d)(4) of the 1986 Code is amended by inserting "and the Virgin Islands" after "section 274(h)(6)(A)".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to investments made after the date of the enactment of this Act.

SEC. 748. TREATMENT OF CERTAIN INSURANCE BRANCHES OF FOREIGN CORPORATIONS.

(a) GENERAL RULE.—Section 964 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new subsection:

"(d) TREATMENT OF CERTAIN BRANCHES.—

"(1) IN GENERAL.—For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

"(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

"(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

"(2) QUALIFIED INSURANCE BRANCH.—For purposes of paragraph (1), the term 'qualified insurance branch' means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

"(A) separate books and accounts are maintained for such branch,

"(B) the principal place of business of such branch is in such foreign country,

"(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

"(D) an election under this paragraph applies to such branch.

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years of foreign corporations beginning after December 31, 1988.

SEC. 749. TREATMENT OF CERTAIN UNITED STATES OBLIGATIONS HELD BY POSSESSION BANKS.

(a) IN GENERAL.—Subsection (e) of section 882 of the 1986 Code is amended—

(1) by inserting "which is not portfolio interest (as defined in section 881(c)(2))" before "shall", and

(2) by striking out the last sentence thereof.

(b) EXCLUSION FROM BRANCH PROFITS TAX.—Paragraph (2) of section 884(d) of the 1986 Code is amended by striking out "or" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", or" and by inserting after subparagraph (D) the following new subparagraph:

"(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e)."

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1988.

SEC. 750. NONCONVENTIONAL FUELS CREDIT.

(a) IN GENERAL.—Section 53(d)(1)(B) of the 1986 Code (relating to credit not allowed for exclusion preferences) is amended by adding at the end thereof the following new clause:

"(iii) SPECIAL RULE.—The adjusted net minimum tax for the taxable year shall be increased by the amount of the credit not allowed under section 29 (relating to credit for producing fuel from a nonconventional source) solely by reason of the application of section 29(b)(5)(B)."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986.

SEC. 751. ONE-YEAR EXTENSION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

Clauses (i) and (ii) of section 29(f)(1)(A) of the 1986 Code (relating to application of section) are each amended by striking out "January 1, 1990" and inserting in lieu thereof "January 1, 1991".

SEC. 752. SMALL PRODUCERS EXEMPT FROM OCCUPATIONAL TAX ON DISTILLED SPIRITS PLANTS.

(a) IN GENERAL.—Section 5081 of the 1986 Code (relating to imposition and rate of occupational tax) is amended by adding at the end thereof the following new subsection:

"(c) EXEMPTION FOR SMALL PRODUCERS.—Subsection (a) shall not apply with respect to any taxpayer who is a proprietor of an eligible distilled spirits plant (as defined in section 5181(c)(4)."

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 5081(b) of the 1986 Code (relating to reduced rates for small propri-

etors) is amended by inserting "not described in subsection (c)" after "taxpayer".

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on July 1, 1989.

SEC. 753. CERTAIN REPLEDGES PERMITTED.

(a) GENERAL RULE.—For purposes of section 453A(d) of the 1986 Code (relating to pledges, etc., of installment obligations), the refinancing of any indebtedness which was outstanding on December 17, 1987, and which was secured on that date and all times thereafter before such refinancing by a pledge of an installment obligation shall be treated as a continuation of the refinanced indebtedness if—

(1) the taxpayer is required by the creditor of the indebtedness to be refinanced to refinance such indebtedness, and

(2) the refinancing is not with such creditor or a person related to such creditor.

(b) LIMITATION ON PRINCIPAL AMOUNT.—Subsection (a) shall not apply to the extent that the principal amount of the indebtedness resulting from the refinancing exceeds the principal amount of the refinanced indebtedness immediately before the refinancing.

(c) LIMITATION ON EXTENSION OF TERM OF REFINANCING.—Notwithstanding subsection (a), if the term of the indebtedness resulting from the refinancing exceeds the term of the refinanced indebtedness, upon the expiration of the term of the refinanced indebtedness as in effect before the refinancing, the outstanding balance of the indebtedness resulting from the refinancing shall be treated as a payment received on any installment obligation which secures such indebtedness.

(d) EFFECTIVE DATE.—This section shall apply as if included in the provisions of section 10202 of the Revenue Act of 1987.

SEC. 754. TREATMENT OF INDIRECT HOLDINGS THROUGH TRUSTS UNDER SECTION 448 OF THE 1986 CODE.

(a) GENERAL RULE.—Paragraph (2) of section 448(d) of the 1986 Code (defining qualified personal service corporation) is amended by adding at the end thereof the following new sentence:

"To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

SEC. 755. JURY DUTY PAY REMITTED TO AN INDIVIDUAL'S EMPLOYER ALLOWED AS A DEDUCTION IN COMPUTING GROSS INCOME.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the 1986 Code (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. JURY DUTY PAY REMITTED TO EMPLOYER.

"If—

"(1) an individual receives payment for the discharge of jury duty, and

"(2) the employer of such individual requires the individual to remit any portion of such payment to the employer in exchange for payment by the employer of compensation for the period the individual was performing jury duty,

then there shall be allowed as a deduction the amount so remitted.".

(b) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of the 1986 Code (defining adjusted gross income) is amended by inserting after paragraph (12) the following new paragraph:

"(13) JURY DUTY PAY REMITTED TO EMPLOYER.—The deduction allowed by section 220.".

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of the 1986 Code is amended by striking out the item relating to section 220 and inserting in lieu thereof the following new items:

"Sec. 220. Jury duty pay remitted to employer.

"Sec. 221. Cross references.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the amendments made by section 132 of the Tax Reform Act of 1986.

SEC. 756. EXCLUDE STRUCTURED SETTLEMENT ARRANGEMENTS FROM MINIMUM TAX.

(a) IN GENERAL.—The last sentence of section 56(g)(4)(B)(iii) of the 1986 Code (as amended by title I) is amended to read as follows: "The preceding sentence shall not apply to any annuity contract which is held under a plan described in section 403(a) or which is described in section 72(u)(3)(C)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 701 of the Reform Act.

SEC. 757. CERTAIN CREDITOR RIGHTS PERMITTED UNDER STRUCTURED SETTLEMENT RULES.

(a) IN GENERAL.—Subsection (c) of section 130 of the 1986 Code (relating to certain personal injury liability assignments) is amended—

(1) by striking out subparagraph (C) of paragraph (2) and redesignating subparagraphs (D) and (E) of paragraph (2) as subparagraphs (C) and (D), respectively, and

(2) by adding at the end thereof the following new sentence:

"The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to assignments after the date of the enactment of this Act.

SEC. 758. NONPROFIT HOSPITAL INSURERS.

(a) IN GENERAL.—In the case of taxable years beginning after December 31, 1986, and before January 1, 1989, for purposes of determining the amount of the deduction under section 832(b)(5)(A)(ii) of the 1986 Code of any qualified nonprofit hospital insurer who elects the application of this section, the amount of discounted unpaid losses shall be increased by an amount equal to 20 percent (10 percent in the case of a taxable year beginning in 1988) of the excess (if any) of—

(1) the undiscounted unpaid losses determined under section 846(b) of the 1986 Code for such taxable year, over

(2) the discounted unpaid losses determined under section 846(a) of the 1986 Code for such taxable year.

(b) QUALIFIED NONPROFIT HOSPITAL INSURER.—For purposes of this section, the term "qualified nonprofit hospital insurer" means any domestic insurance company (other than a life insurance company) if for the taxable year to which the election under subsection (a) applies—

(1) 75 percent or more of the value and the voting rights of such company are owned, or considered as owned under section 267(c) of the 1986 Code, by nonprofit health care facilities or by a trade association of such facilities,

(2) a majority of the insurance or reinsurance provided by such company covers risk of nonprofit health care facilities, and

(3) at least 75 percent of the insurance business of such company is medical malpractice or general liability insurance.

For purposes of this subsection, the term "voting rights" includes voting rights exercisable by policyholders of a mutual or reciprocal insurer or reinsurer.

(c) ELECTION.—An election under this section shall be made on the return of income tax for the taxpayer's first taxable year beginning after December 31, 1986.

(d) FRESH START PROVISIONS.—If an election is made under this section by an insurer, paragraphs (2) and (3) of section 1023(e) of the Tax Reform Act of 1986 shall be applied with respect to the 1st 3 taxable years of such insurer beginning after December 31, 1986.

SEC. 759. APPLICATION OF SECTION 912 TO JUDICIAL EMPLOYEES.

(a) IN GENERAL.—Section 912(2) of the 1986 Code is amended by inserting "(or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations)" after "President".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to allowances received after October 12, 1987, in taxable years ending after such date.

SEC. 760. BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS.

(a) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route, such employee shall be permitted to compute the amount allowable as a deduction under chapter 1 of the Internal Revenue Code of 1986 for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate.

(b) SUBSECTION (a) NOT TO APPLY IF EMPLOYEE CLAIMS DEPRECIATION DEDUCTIONS FOR AUTOMOBILE.—Subsection (a) shall not apply with respect to any automobile if, for any taxable year beginning after December 31, 1987, the taxpayer claimed depreciation deductions for such automobile.

(c) BASIC STANDARD RATE.—For purposes of this section, the term "basic standard rate" means the standard mileage rate which is prescribed by the Secretary of the Treasury or his delegate for computing the amount of the deduction for the business use of an automobile and which—

(1) is in effect at the time of the use referred to in subsection (a),

(2) applies to an automobile which is not fully depreciated, and

(3) applies to the first 15,000 miles (or such other number as the Secretary of the Treasury or his delegate may hereafter prescribe) of business use during the taxable year.

(d) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning after December 31, 1987.

SEC. 761. ETHYL ALCOHOL AND MIXTURES FOR FUEL USE.

Section 1910 of the Omnibus Trade and Competitiveness Act of 1988 is amended by adding at the end thereof the following new subsection:

"(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply with respect to ethyl alcohol, and mixtures of ethyl alcohol, entered—

"(1) during the period beginning on August 23, 1988, and ending on the date of enactment of the Technical Corrections Act of 1988, and

"(2) after the date, if any, on which the Secretary of Agriculture, the Secretary of Energy, and the Secretary of the Treasury, acting jointly, submit to the Congress, and publish in the Federal Register, a written statement certifying that the domestic ethyl alcohol production industry is not fully meeting demand for ethyl alcohol in the United States and that the quantity of ethyl alcohol, and mixtures of ethyl alcohol, that would be imported into the customs territory of the United States free of duty by reason of the amendments made by this section is necessary to maintain adequate supplies of ethyl alcohol for consumers in the United States.".

SEC. 762. CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE.

Any State or political subdivision thereof which—

(1) has relied in good faith on any letter ruling of the Internal Revenue Service issued after December 31, 1983, maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of "wages" for purposes of tax liability under section 3121(v)(1)(B) of such Code, and

(2) has not paid such tax based on such reliance,

shall be relieved of any such liability arising from a finding that such contribution was in fact under a salary reduction agreement for the period ending with the earlier of the date of the enactment of this Act or receipt of a notice of revocation of the letter ruling by the Internal Revenue Service.

Subtitle C—Extension of Expiring Provisions and Other Substantive Provisions

PART I—TAXPAYER BILL OF RIGHTS

SEC. 763. SHORT TITLE.

This part may be cited as the "Omnibus Taxpayer Bill of Rights".

Subpart A—Taxpayer Rights

SEC. 764. DISCLOSURE OF RIGHTS OF TAXPAYERS.

(a) IN GENERAL.—The Secretary of the Treasury shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, prepare a statement which sets forth in simple and nontechnical terms—

(1) the rights of a taxpayer and the obligations of the Internal Revenue Service (hereinafter in this section referred to as the "Service") during an audit;

(2) the procedures by which a taxpayer may appeal any adverse decision of the Service (including administrative and judicial appeals);

(3) the procedures for prosecuting refund claims and filing of taxpayer complaints; and

(4) the procedures which the Service may use in enforcing the internal revenue laws (including assessment, jeopardy assessment, levy and distraint, and enforcement of liens).

(b) TRANSMISSION TO COMMITTEES OF CONGRESS.—The Secretary of the Treasury shall transmit drafts of the statement required under subsection (a) (or proposed revisions of any such statement) to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation on the same day. Any draft (or any revision of a draft) of the statement may not be distributed under subsection (c) until 90 days after the date it was transmitted to such committees.

(c) DISTRIBUTION.—The statement prepared in accordance with subsections (a) and (b) shall be distributed by the Secretary of the Treasury to all taxpayers the Secretary contacts with respect to the determination or collection of any tax (other than by providing tax forms). The Secretary shall take such actions as the Secretary deems necessary to ensure that such distribution does not result in multiple statements being sent to any one taxpayer.

SEC. 765. PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

(a) IN GENERAL.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7520. PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

"(a) RECORDING OF INTERVIEWS.—

"(1) RECORDING BY TAXPAYER.—Any officer or employee of the Internal Revenue Service in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

"(2) RECORDING BY IRS OFFICER OR EMPLOYEE.—An officer or employee of the Internal Revenue Service may record any interview described in paragraph (1) if such officer or employee—

"(A) informs the taxpayer of such recording prior to the interview, and

"(B) upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

"(b) SAFEGUARDS.—

"(1) EXPLANATIONS OF PROCESSES.—An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer—

"(A) in the case of an audit interview, an explanation of the audit process and the taxpayer's rights under such process, or

"(B) in the case of a collection interview, an explanation of the collection process and the taxpayer's rights under such process.

Such officer or employee shall notify the taxpayer at such interview if the case has been referred to the Criminal Investigation Division of the Internal Revenue Service.

"(2) RIGHT OF CONSULTATION.—If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

"(c) REPRESENTATIVES HOLDING POWER OF ATTORNEY.—Any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the Internal Revenue Service may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under subchapter A of chapter 78. Such an officer or employee, with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer.

"(d) SECTION NOT TO APPLY TO CERTAIN INVESTIGATIONS.—This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the Internal Revenue Service."

(b) REGULATIONS WITH RESPECT TO TIME AND PLACE OF EXAMINATION.—The Secretary of the Treasury or the Secretary's delegate shall issue regulations to implement subsection (a) of section 7605 of the 1986 Code (relating to time and place of examination) within 1 year after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7520. Procedures involving taxpayer interviews."

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall apply to interviews conducted on or after the date which is 30 days after the date of the enactment of this Act.

SEC. 766. TAXPAYERS MAY RELY ON WRITTEN ADVICE OF INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Section 6404 of the 1986 Code (relating to abatements) is amended by adding at the end thereof the following new subsection:

"(f) ABATEMENT OF ANY PENALTY OR ADDITION TO TAX ATTRIBUTABLE TO ERRONEOUS WRITTEN ADVICE BY THE INTERNAL REVENUE SERVICE.—

"(1) IN GENERAL.—The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

"(2) LIMITATIONS.—Paragraph (1) shall apply only if—

"(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

"(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to advice requested on or after the date of the enactment of this Act.

SEC. 767. TAXPAYER ASSISTANCE ORDERS.

(a) IN GENERAL.—Subchapter A of chapter 80 of the 1986 Code (relating to general rules for application of the internal revenue laws) is amended by adding at the end thereof the following new section:

"SEC. 7811. TAXPAYER ASSISTANCE ORDERS.

"(a) AUTHORITY TO ISSUE.—Upon application filed by a taxpayer with the Office of Ombudsman (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the Ombudsman may issue a Taxpayer Assistance Order if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.

"(b) TERMS OF A TAXPAYER ASSISTANCE ORDER.—The terms of a Taxpayer Assistance Order may require the Secretary—

"(1) to release property of the taxpayer levied upon, or

"(2) to cease any action, or refrain from taking any action, with respect to the taxpayer under—

"(A) chapter 64 (relating to collection),

"(B) subchapter B of chapter 70 (relating to bankruptcy and receiverships),

"(C) chapter 78 (relating to discovery of liability and enforcement of title), or

"(D) any other provision of law which is specifically described by the Ombudsman in such order.

"(c) AUTHORITY TO MODIFY OR RESCIND.—Any Taxpayer Assistance Order issued by the Ombudsman under this section may be modified or rescinded only by the Ombudsman, a district director, or superiors of such director.

"(d) SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.—The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for—

"(1) the period beginning on the date of the taxpayer's application under subsection (a) and ending on the date of the Ombudsman's decision with respect to such application, and

"(2) any period specified by the Ombudsman in a Taxpayer Assistance Order.

"(e) INDEPENDENT ACTION OF OMBUDSMAN.—Nothing in this section shall prevent the Ombudsman from taking any action in the absence of an application under subsection (a).

"(f) OMBUDSMAN.—For purposes of this section, the term 'Ombudsman' includes any designee of the Ombudsman."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 80 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7811. Taxpayer Assistance Orders."

(c) ISSUANCE OF REGULATIONS.—The Secretary of the Treasury or the Secretary's delegate shall issue such regulations as the Secretary deems necessary within 90 days of the date of the enactment of this Act in order to carry out the purposes of section 7811 of the 1986 Code (as added by this section) and to ensure taxpayers uniform access to administrative procedures.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 768. OFFICE OF INSPECTOR GENERAL.

(a) IN GENERAL.—Paragraph (1) of section 2 of the Inspector General Act of 1978 (5 U.S.C. App. 3) (relating to the purpose and establishment of offices of inspector general and the departments and agencies involved) is amended to read as follows:

"(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);".

(b) ADDITION OF DEPARTMENT OF THE TREASURY TO LIST OF COVERED ESTABLISHMENTS.—Section 11 of such Act (relating to definitions) is amended—

(1) by striking out "or Transportation" in paragraphs (1) and (2) and inserting in lieu thereof "Transportation, or the Treasury",

(2) by inserting "or the Commissioner of Internal Revenue" before "as the case may be", and

(3) by inserting "Internal Revenue Service" before "as the case may be".

(c) TRANSFER OF EXISTING AUDIT AND INVESTIGATION UNITS.—Paragraph (1) of section 9(a) of such Act (relating to transfer of functions) is amended—

(1) by redesignating subparagraphs (I), (J), (K), (L), (M), and (N) as subparagraphs (K), (L), (M), (N), (O), and (P), respectively, and

(2) by inserting after subparagraph (H) the following new subparagraphs:

"(I) of the Department of the Treasury, the office of that department referred to as the 'Office of Inspector General', and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the 'Office of Internal Affairs, Bureau of Alcohol, Tobacco, and Firearms', the 'Office of Internal Affairs, United States Customs Service', and the 'Office of Inspections, United States Secret Service' which is engaged in internal audit activities;

"(J) of the Department of the Treasury, in the Internal Revenue Service of such department, the office of that service referred to as the 'Office of Assistant Commissioner (Inspection), Internal Revenue Service';".

(d) SPECIAL PROVISIONS RELATING TO DEPARTMENT OF THE TREASURY.—The Inspector General Act of 1978 is amended by inserting after section 8A the following new section:

"SPECIAL PROVISIONS REGARDING THE DEPARTMENT OF THE TREASURY

"SEC. 8B. (a) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Bureau of Alcohol, Tobacco and Firearms, the Office of Internal Affairs of the United States Customs Service, and the Office of Inspections of the United States Secret Service. The head of each such office shall report to the Inspector General the significant investigative activities being carried out by such office.

"(b) Notwithstanding subsection (a), the Inspector General of the Department of the Treasury may conduct an investigation of any officer or employee of such Department (other than the Internal Revenue Service) if—

"(1) the Secretary of the Treasury or the Deputy Secretary of the Treasury requests the Inspector General to conduct an investigation;

"(2) the investigation concerns senior officers or employees of the Department of the Treasury, including officers appointed by the President, members of the Senior Executive Service, and individuals in positions classified at grade GS-15 of the General Schedule or above or classified at a grade equivalent to such grade or above such equivalent grade; or

"(3) the investigation involves alleged notorious conduct or any other matter which, in the opinion of the Inspector General, is especially sensitive or of departmental significance.

"(c) If the Inspector General of the Department of the Treasury initiates an investigation under subsection (b), and the officer or employee of the Department of the Treasury subject to investigation is employed by or attached to a bureau or service referred to in subsection (a), the Inspector General may provide the head of the office of such bureau or service referred to in subsection (a) with written notice that the Inspector General has initiated such an investigation. If the Inspector General issues a notice under the preceding sentence, no other investigation shall be initiated into the matter under investigation by the Inspector General and any other investigation of such matter shall cease.

"(d)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General of the Department of the Treasury and the Inspector General of the Internal Revenue Service shall be under the authority, direction, and control of the Secretary of the Treasury and the Commissioner of Internal Revenue, respectively, with respect to audits or investigations, or the issuance of subpenas, which require access to information concerning—

"(A) ongoing criminal investigations or proceedings;

"(B) sensitive undercover operations;

"(C) the identity of confidential sources, including protected witnesses;

"(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior;

"(E) intelligence or counterintelligence matters; or

"(F) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 8, United States Code, or any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note; Public Law 94-524).

"(2) With respect to the information described in paragraph (1), the Secretary of the Treasury or the Commissioner of Internal Revenue may prohibit the Inspector General of the Department of the Treasury or the Inspector General of the Internal Revenue Service, respectively, from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Secretary or the Commissioner determines that such prohibition is necessary to preserve the confidentiality of or prevent the disclosure of any information described in paragraph (1).

"(3)(A) If the Secretary of the Treasury exercises any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General of the Department of the Treasury in writing of such exercise. Within 30 days after receipt of any such notice, the Inspector General of the Department of the Treasury shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, the Commit-

tee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and the Joint Committee on Taxation, together with any comments the Inspector General deems appropriate.

"(B) If the Commissioner of Internal Revenue exercises any power under paragraph (1) or (2), the Commissioner shall notify the Inspector General of the Internal Revenue Service in writing of such exercise. Within 30 days after receipt of such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs and the Committee on Finance of the Senate and to the Committee on Government Operations and the Committee on Ways and Means of the House of Representatives.

"(e) In addition to the standards prescribed by the first sentence of section 3(a), the Inspector General of the Internal Revenue Service shall at the time of appointment be in a career reserved position in the Senior Executive Service in the Internal Revenue Service as defined under section 3132(a)(8) of title 5, United States Code, with demonstrated ability in investigative techniques or internal audit functions with respect to the programs and operations of the Internal Revenue Service.

"(f)(1) In addition to the duties and responsibilities specified in this Act, the Inspector General of the Internal Revenue Service shall perform such duties and exercise such powers as may be prescribed by the Commissioner of Internal Revenue, to the extent such duties and powers are not inconsistent with the purposes of this Act.

"(2) No audit or investigation conducted by the Inspector General of the Department of the Treasury or the Inspector General of the Internal Revenue Service shall affect a final decision of the Secretary of the Treasury or his designee made pursuant to section 6201 of the Internal Revenue Code of 1986 or described in section 6406 of such Code."

(e) DISCLOSURE OF TAX RETURNS AND RETURN INFORMATION.—Section 5(e)(3) of the Inspector General Act of 1978 is amended by striking out "Nothing" in the first sentence and inserting in lieu thereof "Except to the extent provided in section 6103(f) of the Internal Revenue Code of 1986, nothing".

(f) CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code (relating to positions of level IV) is amended by adding at the end thereof the following new items:

"Inspector General, Department of the Treasury.

"Inspector General, Internal Revenue Service."

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 769. BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES.

(a) IN GENERAL.—The Internal Revenue Service shall not use records of tax enforcement results—

(1) to evaluate enforcement officers, appeals officers, or reviewers, or

(2) to impose or suggest production quotas or goals.

(b) APPLICATION OF IRS POLICY STATEMENT.—The Internal Revenue Service shall not be treated as failing to meet the requirements of subsection (a) if the Service follows the policy statement of the Service regarding employee evaluation (as in effect on the date of the enactment of this Act) in a manner which does not violate subsection (a).

(c) CERTIFICATION.—Each district director shall certify quarterly by letter to the Commissioner of Internal Revenue that tax enforcement results are not used in a manner prohibited by subsection (a).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to evaluations conducted on or after the date of the enactment of this Act.

SEC. 770. PROCEDURES RELATING TO INTERNAL REVENUE SERVICE REGULATIONS.

(a) IN GENERAL.—Section 7805 of the 1986 Code (relating to rules and regulations) is amended by adding at the end thereof the following new subsections:

"(e) TEMPORARY REGULATIONS.—

"(1) ISSUANCE.—Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

"(2) 2-YEAR DURATION.—Any temporary regulation shall expire within 2 years after the date of issuance of such regulation.

"(f) IMPACT OF REGULATIONS ON SMALL BUSINESS REVIEWED.—After the publication of any proposed regulation or before the promulgation of any final regulation by the Secretary, the Secretary shall submit such regulation to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business. The Administrator shall have 4 weeks from the date of submission to respond."

(b) EFFECTIVE DATE.—The provisions of this section shall apply to any regulation issued after the date of the enactment of this Act.

SEC. 771. CONTENT OF TAX DUE AND DEFICIENCY NOTICES.

(a) IN GENERAL.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions), as amended by section 765(a), is further amended by adding at the end thereof the following new section:

"SEC. 7521. CONTENT OF TAX DUE AND DEFICIENCY NOTICES.

"Any tax due notice or deficiency notice, including notices described in sections 6155, 6212, and 6303, shall describe the basis for, and identify the amounts (if any) of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in such notice. An inadequate description under the preceding sentence shall not invalidate such notice."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code, as amended by section 765(c), is further amended by adding at the end thereof the following new item:

"Sec. 7521. Content of tax due and deficiency notices."

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to mailings made after the date which is 180 days after the date of enactment of this Act.

SEC. 772. INSTALLMENT PAYMENT OF TAX LIABILITY.

(a) IN GENERAL.—Subchapter A of chapter 62 of the 1986 Code (relating to place and due date for payment of tax) is amended by adding at the end thereof the following new section:

"SEC. 6159. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

"(a) AUTHORIZATION OF AGREEMENTS.—The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the Secretary determines that such agreement will facilitate collection of such liability.

"(b) EXTENT TO WHICH AGREEMENTS REMAIN IN EFFECT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any agreement entered into by the Secretary under subsection (a) shall remain in effect for the term of the agreement.

"(2) INADEQUATE INFORMATION OR JEOPARDY.—The Secretary may terminate any agreement entered into by the Secretary under subsection (a) if—

"(A) information which the taxpayer provided (upon request of the Secretary) to the Secretary prior to the date such agreement was entered into was inaccurate or incomplete, or

"(B) the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.

"(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—

"(A) IN GENERAL.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

"(B) NOTICE.—Action may be taken by the Secretary under subparagraph (A) only if—

"(i) notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

"(ii) such notice includes the reasons why the Secretary believes a significant change in the financial condition of the taxpayer has occurred.

"(4) FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION.—The Secretary may alter, modify, or terminate an agreement entered into by the Secretary under subsection (a) in the case of the failure of the taxpayer—

"(A) to pay any installment at the time such installment payment is due under such agreement,

"(B) to pay any other tax liability at the time such liability is due, or

"(C) to provide a financial condition update as requested by the Secretary."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6601(b) of the 1986 Code (relating to last day prescribed for payment) is amended by inserting "or any installment agreement entered into under section 6159" after "time for payment".

(2) The table of sections for subchapter A of chapter 62 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 6159. Agreements for payment of tax liability in installments."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 773. ASSISTANT COMMISSIONER FOR TAXPAYER SERVICES.

(a) IN GENERAL.—Section 7802 of the 1986 Code (relating to Commissioner of Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations) is amended by adding at the end thereof the following new subsection:

"(c) ASSISTANT COMMISSIONER (TAXPAYER SERVICES).—There is established within the Internal Revenue Service an office to be known as the 'Office for Taxpayers Serv-

ices' to be under the supervision and direction of an Assistant Commissioner of the Internal Revenue. The Assistant Commissioner shall be responsible for telephone, walk-in, and educational services, and the design and production of tax and informational forms."

(b) ANNUAL REPORTS TO CONGRESS.—The Assistant Commissioner (Taxpayer Services) and the Taxpayer Ombudsman for the Internal Revenue Service shall jointly make an annual report regarding the quality of taxpayer services provided. Such report shall be made to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subpart B—Levy and Lien Provisions

SEC. 774. LEVY AND DISTRAINT.

(a) NOTICE.—Section 6331(d) of the 1986 Code (relating to levy and distraint) is amended—

(1) by striking out "10 days" in paragraph (2) and inserting in lieu thereof "30 days",

(2) by striking out "10-DAY REQUIREMENT" in the heading of paragraph (2) and inserting in lieu thereof "30-DAY REQUIREMENT", and

(3) by adding at the end thereof the following new paragraph:

"(4) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1)—

"(A) shall cite the sections of this title which relate to levy on property, sale of property, release of lien on property, and redemption of property, and

"(B) shall include a description of—

"(i) the provisions of this title relating to levy and sale of property,

"(ii) the procedures applicable to the levy and sale of property under this title,

"(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

"(iv) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

"(v) the provisions of this title relating to redemption of property and release of liens on property, and

"(vi) the procedures applicable to the redemption of property and the release of a lien on property under this title."

(b) EFFECT OF LEVY ON SALARY AND WAGES.—

(1) IN GENERAL.—Subsection (e) of section 6331 of the 1986 Code (relating to levy and distraint) is amended to read as follows:

"(e) CONTINUING LEVY ON SALARY AND WAGES.—The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343."

(2) CROSS REFERENCE.—Section 6331(f) of the 1986 Code (relating to cross references) is amended by adding at the end thereof the following new paragraph:

"(3) For release and notice of release of levy, see section 6343."

(c) PROPERTY EXEMPT FROM LEVY.—

(1) FUEL, PROVISIONS, FURNITURE, PERSONAL EFFECTS, BOOKS, TOOLS, AND MACHINERY.—Section 6334 of the 1986 Code (relating to property exempt from levy) is amended by adding at the end thereof the following new subsection:

"(e) ADJUSTMENTS FOR INFLATION FOR CERTAIN PROPERTY.—In the case of calendar years 1989 and 1990, each dollar amount contained in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(1) such dollar amounts, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year.

In the case of any calendar year after 1990, such dollar amounts shall be such dollar amounts in effect in 1990."

(2) WAGES, SALARY, AND OTHER INCOME.—

(A) INCREASE IN AMOUNT EXEMPT.—Paragraph (1) of section 6334(d) of the 1986 Code (relating to exempt amount of wages, salary, or other income) is amended to read as follows:

"(1) INDIVIDUALS ON WEEKLY BASIS.—In the case of an individual who is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt from levy under subsection (a)(9) shall be the exempt amount."

(B) EXEMPT AMOUNT DEFINED.—Subsection (d) of section 6334 of the 1986 Code (relating to property exempt from levy) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) EXEMPT AMOUNT.—For purposes of paragraph (1), the term 'exempt amount' means an amount equal to—

"(A) the sum of—

"(i) the standard deduction, and

"(ii) the aggregate amount of the deductions for personal exemptions allowed the taxpayer under section 151 in the taxable year in which such levy occurs, divided by

"(B) 52."

(3) PROPERTY EXEMPT IN ABSENCE OF APPROVAL OR JEOPARDY.—

(A) IN GENERAL.—Subsection (a) of section 6334 of the 1986 Code (relating to property exempt from levy) is amended by adding at the end thereof the following new paragraph:

"(12) PROPERTY EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY.—Except to the extent provided in subsection (f)—

"(A) the principal residence of the taxpayer (within the meaning of section 1034), and

"(B) any tangible personal property essential in carrying on the trade or business of the taxpayer, but only if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business."

(B) LEVY PERMITTED IN CASE OF JEOPARDY OR APPROVAL BY CERTAIN OFFICIALS.—Section 6334 of the 1986 Code, as amended by paragraph (1), is amended by adding at the end thereof the following new subsection:

"(f) LEVY ALLOWED ON CERTAIN PROPERTY IN CASE OF JEOPARDY OR CERTAIN APPROVAL.—Property described in subsection (a)(12) shall not be exempt from levy if—

"(1) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property, or

"(2) the Secretary finds that the collection of tax is in jeopardy."

(d) UNECONOMICAL LEVY; LEVY ON APPEARANCE DATE OF SUMMONS.—Section 6331 of the 1986 Code (relating to levy and distraint) is amended by redesignating subsection (f) as subsection (h) and by inserting after subsection (e) the following new subsections:

"(f) UNECONOMICAL LEVY.—No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

"(g) LEVY ON APPEARANCE DATE OF SUMMONS.—

"(1) IN GENERAL.—No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

"(2) NO APPLICATION IN CASE OF JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of tax is in jeopardy."

(e) SURRENDER OF BANK ACCOUNTS SUBJECT TO LEVY ONLY AFTER 21 DAYS.—

(1) IN GENERAL.—Section 6332 of the 1986 Code (relating to surrender of property subject to levy) is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) SPECIAL RULE FOR BANKS.—Any bank (as defined in section 408(n)) shall surrender (subject to an attachment or execution under judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy."

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 6332 of the 1986 Code is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)"

(B) Subsection (e) of section 6332 of the 1986 Code, as redesignated by subsection (a), is amended by striking out "subsection (c)(1)" and inserting in lieu thereof "subsection (d)(1)"

(f) RELEASE OF LEVY.—Subsection (a) of section 6343 of the 1986 Code (relating to release of levy) is amended to read as follows:

"(a) RELEASE OF LEVY AND NOTICE OF RELEASE.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

"(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

"(B) release of such levy will facilitate the collection of such liability,

"(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

"(D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

"(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

"(2) SUBSEQUENT LEVY.—The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to levies

issued 90 days after the date of the enactment of this Act.

SEC. 775. REVIEW OF JEOPARDY LEVY AND ASSESSMENT PROCEDURES.

(a) IN GENERAL.—Subsection (a)(1) of section 7429 of the 1986 Code (relating to review of jeopardy assessment procedures) is amended—

(1) by inserting "or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a)," after "6862,", and

(2) by inserting "or levy" after "such assessment".

(b) ADMINISTRATIVE DETERMINATIONS.—Paragraph (3) of section 7429(a) of the 1986 Code (relating to redetermination by the Secretary) is amended to read as follows:

"(3) REDETERMINATION BY SECRETARY.—After a request for review is made under paragraph (2), the Secretary shall determine—

"(A) whether or not—

"(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

"(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

"(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances."

(c) TAX COURT REVIEW JURISDICTION.—Subsection (b) of section 7429 of the 1986 Code is amended to read as follows:

"(b) JUDICIAL REVIEW.—

"(1) PROCEEDINGS PERMITTED.—Within 90 days after the earlier of—

"(A) the day the Secretary notifies the taxpayer of the Secretary's determination described in subsection (a)(3), or

"(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for a determination under this subsection in the court with jurisdiction determined under paragraph (2).

"(2) JURISDICTION FOR DETERMINATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the district courts of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection.

"(B) TAX COURT.—If a petition for a redetermination of a deficiency under section 6213(a) has been timely filed with the Tax Court before the making of an assessment or levy that is subject to the review procedures of this section, and 1 or more of the taxes and taxable periods before the Tax Court because of such petition is also included in the written statement that is provided to the taxpayer under subsection (a), then the Tax Court also shall have jurisdiction over any civil action for a determination under this subsection with respect to all the taxes and taxable periods included in such written statement.

"(3) DETERMINATION BY COURT.—Within 20 days after a proceeding is commenced under paragraph (1), the court shall determine—

"(A) whether or not—

"(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

"(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

"(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

If the court determines that proper service was not made on the United States or on the Secretary, as may be appropriate, within 5 days after the date of the commencement of the proceeding, then the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States or on the Secretary, as may be appropriate.

"(4) ORDER OF COURT.—If the court determines that the making of such levy is unreasonable, that the making of such assessment is unreasonable, or that the amount assessed or demanded is inappropriate, then the court may order the Secretary to release such levy, to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate."

(d) VENUE.—Section 7429(e) of the 1986 Code (relating to venue) is amended to read as follows:

"(e) VENUE.—

"(1) DISTRICT COURT.—A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a) (1) or (2) of title 28, United States Code.

"(2) TRANSFER OF ACTIONS.—If a civil action is filed under subsection (b) with the Tax Court and such court finds that there is want of jurisdiction because of the jurisdiction provisions of subsection (b)(2), then the Tax Court shall, if such court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed. Any civil action so transferred shall proceed as if such action had been filed in the district court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred."

(e) CONFORMING AMENDMENTS.—

(1) Section 7429(c) of the 1986 Code (relating to extension of 20-day period where taxpayer so requests) and section 7429(f) (relating to finality of determination) are amended by striking out "district" each place it appears.

(2) Section 7429(g) of the 1986 Code (relating to burden of proof) is amended—

(A) by inserting "the making of a levy described in subsection (a)(1) or" after "whether" in paragraph (1),

(B) by striking out "TERMINATION" in the heading of paragraph (1) and inserting in lieu thereof "LEVY, TERMINATION,", and

(C) by striking out "an action" and inserting in lieu thereof "a proceeding" in paragraphs (1) and (2).

(3) The heading of section 7429 of the 1986 Code is amended by inserting "levy or" after "jeopardy".

(4) The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by inserting "levy or" after "jeopardy" in the item relating to section 7429.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to jeopardy levies issued and assessments made after the date of the enactment of this Act.

SEC. 776. ADMINISTRATIVE APPEAL OF LIENS.

(a) ESTABLISHMENT OF ADMINISTRATIVE APPEAL FOR DISPUTED LIENS.—Subchapter C of chapter 64 of the 1986 Code (relating to lien for taxes) is amended by redesignating section 6326 as section 6327 and inserting after section 6325 the following new section:

"SEC. 6326. ADMINISTRATIVE APPEAL OF LIENS.

"(a) IN GENERAL.—In such form and at such time as the Secretary shall prescribe by regulations, any person shall be allowed to appeal to the Secretary after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien."

"(b) CERTIFICATE OF RELEASE.—If the Secretary determines that the filing of the notice of any lien was erroneous, the Secretary shall immediately issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous."

(b) REGULATIONS.—The Secretary of the Treasury or the Secretary's delegate shall prescribe the regulations necessary to implement the administrative appeal provided for in the amendment made by subsection (a) within 180 days after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 64 of the 1986 Code is amended by striking out the item relating to section 6326 and inserting in lieu thereof the following:

"Sec. 6326. Administrative appeal of liens.

"Sec. 6327. Cross references."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subpart C—Proceedings by Taxpayers

SEC. 777. AWARDING OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

(a) IN GENERAL.—Section 7430 of the 1986 Code is amended to read as follows:

"SEC. 7430. AWARDING OF COSTS AND CERTAIN FEES.

"(a) IN GENERAL.—In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for—

"(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and

"(2) reasonable litigation costs incurred in connection with such court proceeding.

"(b) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service.

"(2) ONLY COSTS ALLOCABLE TO THE UNITED STATES.—An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

"(3) EXCLUSION OF DECLARATORY JUDGMENT PROCEEDINGS.—

"(A) IN GENERAL.—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

"(B) EXCEPTION FOR SECTION 501(c)(3) DETERMINATION REVOCATION PROCEEDINGS.—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a

determination that the organization is described in section 501(c)(3).

"(4) COSTS DENIED WHERE PARTY PREVAILING PROTRACTS PROCEEDINGS.—No award for reasonable litigation and administrative costs may be made under subsection (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

"(c) DEFINITIONS.—For purposes of this section—

"(1) REASONABLE LITIGATION COSTS.—The term 'reasonable litigation costs' includes—

"(A) reasonable court costs, and

"(B) based upon prevailing market rates for the kind or quality of services furnished—

"(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

"(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

"(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate.

"(2) REASONABLE ADMINISTRATIVE COSTS.—The term 'reasonable administrative costs' means—

"(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

"(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(B) of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after the earlier of (i) the date of the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency.

"(3) ATTORNEY'S FEES.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

"(4) PREVAILING PARTY.—

"(A) IN GENERAL.—The term 'prevailing party' means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)—

"(i) with respect to which the United States fails to establish that the position of the United States was substantially justified,

"(ii) which—

"(I) has substantially prevailed with respect to the amount in controversy, or

"(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

"(iii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).

"(B) DETERMINATION AS TO PREVAILING PARTY.—Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made by agreement of the parties or—

"(i) in the case where the final determination with respect to the tax, interest, or penalty is made at the administrative level, by the Internal Revenue Service, or

"(ii) in the case where such final determination is made by a court, the court.

"(5) ADMINISTRATIVE PROCEEDINGS.—The term 'administrative proceeding' means any procedure or other action before the Internal Revenue Service.

"(6) COURT PROCEEDINGS.—The term 'court proceeding' means any civil action brought in a court of the United States (including the Tax Court and the United States Claims Court).

"(7) POSITION OF UNITED STATES.—The term 'position of the United States' means the position taken by the United States in the proceeding to which subsection (a) applies as of the later of—

"(A) the date of the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals (or if earlier, the date of the notice of deficiency), or

"(B) the date by which the taxpayer has presented the relevant evidence within the control of the taxpayer and legal arguments with respect to such proceeding to examination or service center personnel of the Internal Revenue Service.

"(d) SPECIAL RULES FOR PAYMENT OF COSTS.—

"(1) REASONABLE ADMINISTRATIVE COSTS.—An award for reasonable administrative costs shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(2) REASONABLE LITIGATION COSTS.—An award for reasonable litigation costs shall be payable in the case of the Tax Court in the same manner as such an award by a district court.

"(e) MULTIPLE ACTIONS.—For purposes of this section, in the case of —

"(1) multiple actions which could have been joined or consolidated, or

"(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single court proceeding in the same court,

such actions or cases shall be treated as 1 court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

"(f) RIGHT OF APPEAL.—

"(1) COURT PROCEEDINGS.—An order granting or denying (in whole or in part) an award for reasonable litigation or administrative costs under subsection (a) in a court proceeding, shall be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment.

"(2) ADMINISTRATIVE PROCEEDINGS.—A decision granting or denying (in whole or in part) an award for reasonable administrative costs under subsection (a) by the Internal Revenue Service shall be subject to appeal to the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute)."

(b) CONFORMING AMENDMENT.—Section 504 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) No award may be made under this section for costs, fees, or other expenses which may be awarded under section 7430 of the Internal Revenue Code of 1986."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out "court" in the item relating to section 7430.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commencing after the date of the enactment of this Act.

SEC. 778. CIVIL CAUSE OF ACTION FOR DAMAGES SUSTAINED DUE TO FAILURE TO RELEASE LIEN.

(a) IN GENERAL.—Subchapter B of chapter 76 of the 1986 Code (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7432 as section 7433 and by inserting after section 7431 the following new section:

"SEC. 7432. CIVIL DAMAGES FOR FAILURE TO RELEASE LIEN.

"(a) IN GENERAL.—If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien under section 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

"(1) the greater of—

"(A) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, or

"(B) $100 per day for each day occurring after the date which is 10 days after the taxpayer has notified the Secretary in writing (in such form and manner as the Secretary may provide) of such failure after the end of the period described in section 6325, and

"(2) the costs of the action.

"(c) TAX COURT JURISDICTION.—The Tax Court shall have jurisdiction of any action brought under subsection (a) in the same manner as a claim for refund.

"(d) SETTLEMENT AND PAYMENT AUTHORITY.—The Secretary may settle any claims that could have been filed under this section. Such claims shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(e) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

"(2) MITIGATION OF DAMAGES.—The amount of damages awarded under subsection (b)(1)(A) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

"(3) LIMITATION ON PER DIEM DAMAGES.—No award for damages described in subsection (b)(1)(B) shall exceed $1,000.

"(4) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought, without regard to

the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the failure to release a lien under section 6325 by the defendant."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out the item relating to section 7432 and inserting in lieu thereof the following new items:

"Sec. 7432. Civil damages for failure to release lien.

"Sec. 7433. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices provided by the taxpayer under section 7432(b)(1)(B) of the 1986 Code, as added by this section, and damages arising after the date of the enactment of this Act.

SEC. 779. CIVIL CAUSE OF ACTION FOR DAMAGES SUSTAINED DUE TO UNREASONABLE ACTIONS BY INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Subchapter B of chapter 76 of the 1986 Code (relating to proceedings by taxpayers and third parties), as amended by section 778(a), is further amended by redesignating section 7433 as section 7434 and by inserting after section 7432 the following new section:

"SEC. 7433. CIVIL DAMAGES FOR UNREASONABLE ACTIONS.

"(a) IN GENERAL.—If, in connection with any determination or collection of Federal tax, any officer or employee of the Internal Revenue Service carelessly, recklessly, or intentionally disregards any provision of Federal law, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

"(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the determination or collection actions of the defendant, and

"(2) the costs of the action.

"(c) TAX COURT JURISDICTION.—The Tax Court shall have jurisdiction of any action brought under subsection (a) in the same manner as a claim for refund.

"(d) SETTLEMENT AND PAYMENT AUTHORITY.—The Secretary may settle any claims that could be filed under this section. Such claims shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(e) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

"(2) DAMAGES DENIED WHERE PLAINTIFF IS CONTRIBUTORILY NEGLIGENT.—No award for damages may be made under subsection (b) if the plaintiff is found to have been contributorily negligent.

"(3) MITIGATION OF DAMAGES.—The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

"(4) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the actions."

(b) DAMAGES FOR FRIVOLOUS OR GROUNDLESS CLAIMS.—

(1) IN GENERAL.—Section 6673 of the 1986 Code (relating to damages assessable for instituting proceedings before the Tax Court primarily for delay, etc.) is amended by inserting "(a) IN GENERAL.—" before "Whenever" and by adding at the end thereof the following new subsection:

"(b) CLAIMS UNDER SECTION 7433.—Whenever it appears to the court that the taxpayer's position in proceedings before the court instituted or maintained by such taxpayer under section 7433 is frivolous or groundless, damages in an amount not in excess of $10,000 shall be awarded to the United States by the court in the court's decision. Damages so awarded shall be assessed at the same time as the deficiency, if any, and shall be paid upon notice and demand from the Secretary and shall be collected as a part of the tax."

(2) CLERICAL AMENDMENT.—The heading for section 6673 of the 1986 Code is amended by striking out "TAX".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code, as amended by section 778(b), is further amended by striking out the item relating to section 7433 and inserting in lieu thereof the following new items:

"Sec. 7433. Civil damages for unreasonable actions.

"Sec. 7434. Cross references."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

Subpart D—Tax Court Jurisdiction

SEC. 780. JURISDICTION TO RESTRAIN CERTAIN PREMATURE ASSESSMENTS.

(a) IN GENERAL.—Section 6213(a) of the 1986 Code (relating to time for filing petition and restriction on assessment) is amended by striking out the period at the end of the last sentence and inserting in lieu thereof ", including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition."

(b) APPEAL OF ORDER RESTRAINING ASSESSMENT, ETC.—Section 7482(a) of the 1986 Code (relating to jurisdiction on appeal) is amended by adding at the end thereof the following new paragraph:

"(3) CERTAIN ORDERS ENTERED UNDER SECTION 6213(a).—An order of the Tax Court which is entered under authority of section 6213(a) and which resolves a proceeding to restrain assessment or collection shall be treated as a decision of the Tax Court for purposes of this section and shall be subject to the same review by the United States Court of Appeals as a similar order of a district court."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to orders entered after the date of the enactment of this Act.

SEC. 781. JURISDICTION TO ENFORCE OVERPAYMENT DETERMINATIONS.

(a) IN GENERAL.—Section 6512(b) of the 1986 Code (relating to overpayment determined by the Tax Court) is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (3)" in paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting the following new paragraph after paragraph (1):

"(2) JURISDICTION TO ENFORCE.—

"(A) IN GENERAL.—If, after 120 days after a decision of the Tax Court has become final, the Secretary has failed to refund the overpayment determined by the Tax Court, together with the interest thereon as provided in subchapter B of chapter 67, then the Tax Court, upon motion by the taxpayer, shall have jurisdiction to order the refund of such overpayment and interest.

"(B) SANCTIONS IF FAILURE TO REFUND NOT SUBSTANTIALLY JUSTIFIED.—

"(i) BURDEN OF PROOF.—In any proceeding under this paragraph, the burden of proof shall be on the Secretary to establish that the Secretary's failure to credit, offset, or refund the overpayment and interest to the taxpayer was substantially justified. The Secretary's failure to refund the overpayment and interest shall be conclusively presumed to be substantially justified to the extent of any credit or offset made pursuant to section 6402.

"(ii) NO JURISDICTION OVER CREDITS AND OFFSETS.—In deciding whether the Secretary's failure to refund an overpayment and interest was substantially justified, and for that purpose only, the Tax Court shall have no jurisdiction over the validity or merits of any credits or offsets that the Secretary is authorized to make under section 6402 and that the Secretary claims as credits or offsets to the overpayment and interest.

"(iii) SANCTIONS.—If the Secretary does not establish that the Secretary's failure to refund the overpayment and interest was substantially justified, then the taxpayer shall be entitled to interest at a rate of 120 percent of the overpayment rate provided by section 6621(a)(1), such interest to begin on the later of—

"(I) the date the Tax Court determines under this paragraph that the Secretary's failure to refund the overpayment was not substantially justified, or

"(II) the 121st day after the decision of the Tax Court determining the overpayment under paragraph (1) becomes final.

"(iv) REVIEWABILITY.—Any order of the Tax Court disposing of a motion by the taxpayer under this paragraph shall be subject to review, but only with respect to the matters determined in such order."

(b) AMENDMENTS ADDING CROSS REFERENCES.—

(1) Section 6214(e) of the 1986 Code is amended by striking out "REFERENCE.—" and inserting in lieu thereof "REFERENCES.—" in the heading, by designating the undesignated paragraph as paragraph (1), and by adding at the end thereof the following new paragraph:

"(2) For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2)."

(2) Section 6512(c) of the 1986 Code is amended by striking out "REFERENCE.—" and inserting in lieu thereof "REFERENCES.—" in the heading, by designating the undesignated paragraph as paragraph (1), and by adding at the end thereof the following new paragraph:

"(2) For provision giving the Tax Court jurisdiction to award reasonable litigation costs in proceedings to enforce an overpayment determined by such court, see section 7430."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to overpayments determined by the Tax Court which

have not yet been refunded by the 90th day after the date of the enactment of this Act.

SEC. 782. JURISDICTION TO REVIEW CERTAIN SALES OF SEIZED PROPERTY.

(a) JURISDICTION TO REVIEW CERTAIN SALES OF PROPERTY.—Section 6863(b)(3) of the 1986 Code (relating to stay of sale of seized property pending Tax Court decision) is amended by adding at the end thereof the following new subparagraph:

"(C) REVIEW BY TAX COURT.—If, but for the application of subparagraph (B), a sale would be prohibited by subparagraph (A)(iii), then the Tax Court shall have jurisdiction to review the Secretary's determination under subparagraph (B) that the property may be sold. Such review may be commenced upon motion by either the Secretary or the taxpayer. An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act.

SEC. 783. JURISDICTION TO REDETERMINE INTEREST ON DEFICIENCIES.

(a) IN GENERAL.—Section 7481 of the 1986 Code (relating to date when Tax Court decision becomes final) is amended by adding at the end thereof the following new subsection:

"(c) JURISDICTION OVER INTEREST DETERMINATIONS.—Notwithstanding subsection (a), if—

"(1) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title,

"(2) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

"(3) within 1 year after the date the decision of the Tax Court becomes final under subsection (a), the taxpayer files a petition in the Tax Court for a determination that the amount of interest claimed by the Secretary exceeds the amount of interest imposed by this title,

then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest and the amount of any such overpayment. If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining the interest due, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court."

(b) CONFORMING AMENDMENTS.—

(1) Section 6512(a) of the 1986 Code (relating to effect of petition to Tax Court) is amended by inserting after "section 6213(a)" the following: "(or 7481(c) with respect to a determination of statutory interest)".

(2) Subsection (a) of section 7481 of the 1986 Code is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to assessments of deficiencies redetermined by the Tax Court made after the date of the enactment of this Act.

SEC. 784. JURISDICTION TO MODIFY DECISIONS IN CERTAIN ESTATE TAX CASES.

(a) IN GENERAL.—Section 7481 of the 1986 Code (relating to date when Tax Court decision becomes final), as amended by section 783(a), is further amended by adding at the end thereof the following new subsection:

"(d) DECISIONS RELATING TO ESTATE TAX EXTENDED UNDER SECTION 6166.—If with respect to a decedent's estate subject to a decision of the Tax Court—

"(1) the time for payment of an amount of tax imposed by chapter 11 is extended under section 6166, and

"(2) there is treated as an administrative expense under section 2053 either—

"(A) any amount of interest which a decedent's estate pays on any portion of the tax imposed by section 2001 on such estate for which the time of payment is extended under section 6166, or

"(B) interest on any estate, succession, legacy, or inheritance tax imposed by a State on such estate during the period of the extension of time for payment under section 6166,

then, upon a motion by the petitioner in such case in which such time for payment of tax has been extended under section 6166, the Tax Court may reopen the case solely to modify the Court's decision to reflect such estate's entitlement to a deduction for such administration expenses under section 2053 and may hold further trial solely with respect to the claim for such deduction if, within the discretion of the Tax Court, such a hearing is deemed necessary. An order of the Tax Court disposing of a motion under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) CONFORMING AMENDMENTS.—

(1) Section 6512(a) of the 1986 Code (relating to effect of petition to Tax Court), as amended by section , is further amended by striking out "interest)" and inserting in lieu thereof "interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court)".

(2) Subsection (a) of section 7481 of the 1986 Code, as amended by section 783(b)(2), is further amended by striking out "subsections (b) and (c)" and inserting in lieu thereof "subsections (b), (c), and (d)".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to Tax Court cases for which the decision is not final on the date of the enactment of this Act.

SEC. 785. REFUND JURISDICTION FOR THE UNITED STATES TAX COURT.

(a) IN GENERAL.—Section 7442 of the 1986 Code (relating to jurisdiction of the Tax Court) is amended to read as follows:

"SEC. 7442. JURISDICTION.

"(a) GENERAL RULE.—The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926.

"(b) REFUND JURISDICTION.—Subject to the provisions of subsection (c), the Tax Court and its divisions shall have original jurisdiction of any civil action against the Secretary for the recovery of any tax, addition to the tax, additional amount, or penalty (including interest thereon) which would be subject to the deficiency procedures of subchapter B of chapter 63 if the Secretary determined a deficiency therein. The jurisdiction shall include any counterclaim, set-off, or equitable recoupment against (or for) the taxpayer.

"(c) LIMITATIONS.—No civil action shall be commenced by a taxpayer in the Tax Court under subsection (b) unless—

"(1) there is then pending and awaiting submission in the Tax Court an action commenced by the taxpayer to contest a deficiency determined by the Secretary for a taxable period or type of tax different from the taxable period or type of tax which would be the subject of a civil action under subsection (b), and

"(2)(A) one or more issues in the civil action under subsection (b) is related by subject matter to one or more issues in the pending case, or

"(B) the result in the civil action under subsection (b) would affect the amount in controversy in the pending case, or the result in the pending case would affect the amount in controversy in a civil action under subsection (b).

"(d) STAY OF PROCEEDINGS WHERE NO PRIOR AUDIT.—If—

(1) a civil action is filed in the Tax Court under subsection (b), and

(2) the Secretary shows to the satisfaction of a judge of the Tax Court or a special trial judge of the Court that the Secretary has not examined books and witnesses under section 7602 for the taxable period or periods or type of tax involved in the civil action filed under subsection (b),

all proceedings in the Tax Court in both the pending case and the civil action under subsection (b) shall be stayed for a period of 180 days. The stay of proceedings under this subsection may be extended for an additional period or periods under extraordinary circumstances for good cause shown. During any stay of proceedings in a civil action under subsection (b), the provisions of chapter 78 (relating to discovery of liability and enforcement of title) shall be applied with regard to the tax liabilities in dispute in such civil action as though the civil action had not been brought in the Tax Court.

"(e) TRANSFER OF ACTIONS.—If a civil action is filed under subsection (b) with the Tax Court and such Court finds that there is want of jurisdiction because of the provisions of subsection (c), then the Tax Court shall, if such Court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed or to the United States Claims Court, at the election of the taxpayer. Any civil action so transferred shall proceed as if such action had been filed in the court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred."

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENT OF SECTION 6212.—Paragraph (1) of section 6212(c) of the 1986 Code (relating to further deficiency letters restricted) is amended by inserting "or if the taxpayer has commenced a proceeding under section 7442(b)," after "section 6213(a),".

(2) AMENDMENT OF SECTION 6214.—Subsection (a) of section 6214 of the 1986 Code (relating to determinations by Tax Court) is amended to read as follows:

"(a) JURISDICTION AS TO INCREASE OF DEFICIENCY, ADDITIONAL AMOUNTS, OR ADDITIONS TO THE TAX.—

"(1) JURISDICTION TO DETERMINE.—Except as provided by paragraph (2) and by section 7463, the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redeter-

mined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or any addition to the tax should be assessed, if claim therefor is asserted by the Secretary at or before the hearing or a rehearing.

"(2) LIMIT ON DETERMINATION.—In the case of any proceeding under section 7442(b), no deficiency shall be determined unless the Tax Court determines as part of the Court's decision that such deficiency was asserted by the Secretary in an appropriate pleading filed with the Tax Court within the period of limitations provided in section 6501."

(3) AMENDMENT OF SECTION 6228.—Paragraphs (1)(B) and (2)(A)(i) of section 6228(b) of the 1986 Code (relating to certain requests for administrative adjustment) are each amended by inserting "or 7442(b)" after "section 7422".

(4) AMENDMENT OF SECTION 6512.—Paragraph (1) of section 6512(b) of the 1986 Code (relating to overpayment determined by Tax Court) is amended by inserting "if the Secretary has mailed to the taxpayer a notice of deficiency under section 6212(a) (relating to deficiencies of income, estate, gift, and certain excise taxes), if the taxpayer files a petition with the Tax Court within the time prescribed by section 6213(a), and" after "section 7463,".

(5) AMENDMENTS OF SECTION 7422.—

(A) The first sentence of paragraph (1) of section 7422(f) of the 1986 Code (relating to limitation on right of action for refund) is amended by striking out "A suit" and inserting in lieu thereof "Except as provided in section 7442(b), a suit"

(B) Section 7422 of the 1986 Code (relating to civil actions for refund) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULE IN CASE OF NOTICE OF DEFICIENCY.—If the Secretary has sent a notice of deficiency with respect to income tax for a taxable year, gift tax for a calendar year or calendar quarter, estate tax in respect to the taxable estate of a decedent, tax imposed by chapters 41, 42, 43, or 44 with respect to an act (or failure to act), or tax imposed by chapter 45 for a taxable period, no proceeding under section 7442(b) may be commenced in the Tax Court with respect to any such tax for so long as the taxpayer is permitted to file a petition with the Tax Court for a redetermination of such deficiency."

(6) AMENDMENTS OF SECTION 7423.—

(A) Section 7423 of the 1986 Code (relating to repayments to officers or employees) is amended to read as follows:

"SEC. 7423. RECOVERIES AGAINST OFFICERS OR EMPLOYEES.

"(a) REPAYMENTS TO OFFICERS OR EMPLOYEES.—The Secretary, subject to regulations prescribed by the Secretary, is authorized to repay—

"(1) COLLECTIONS RECOVERED.—To any officer or employee of the United States the full amount of such sums of money as may be recovered against such officer or employee in any court, for any internal revenue taxes collected by such officer or employee, with the cost and expense of suit.

"(2) DAMAGES AND COSTS.—All damages and costs recovered against any officer or employee of the United States in any suit brought against such officer or employee by reason of anything done in the due performance of such officer's or employee's official duty under this title.

"(b) NO EXECUTION AGAINST SECRETARY.—Execution shall not issue against the Secretary for a refund on a final decision of the Tax Court in a proceeding under section 7442(b), but any amount payable as a result of such decision shall be payable in the same manner as such an award by a district court."

(B) The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out the item relating to section 7423 and inserting in lieu thereof the following new item:

"Sec. 7423. Recoveries against officers or employees."

(7) AMENDMENTS OF SECTION 7451.—

(A) Section 7451 of the 1986 Code (relating to fee for filing petition) is amended by striking out "PETITION" and inserting in lieu thereof "INITIAL PLEADING", and by inserting "or for the recovery of any amount under section 7442(b)" after "section 6228(a)".

(B) The heading of section 7451 of the 1986 Code is amended by striking out "petition" and inserting in lieu thereof "initial pleading".

(C) The table of sections for part II of subchapter C of chapter 76 of the 1986 Code is amended by striking out "petition" in the item relating to section 7451 and inserting in lieu thereof "initial pleading".

(8) AMENDMENT OF SECTION 7459.—The first sentence of subsection (c) of section 7459 of the 1986 Code (relating to reports and decisions) is amended by inserting "or overpayment" after "amount of the deficiency".

(9) AMENDMENT OF SECTION 7463.—The first sentence of subsection (a) of section 7463 of the 1986 Code (relating to disputes involving $10,000 or less) is amended by striking out "petition" and inserting in lieu thereof "pleading", and by inserting "or for a refund," after "of a deficiency".

(10) AMENDMENTS OF SECTION 7482.—

(A) Subparagraph (A) of section 7482(b)(1) of the 1986 Code (relating to venue) is amended by inserting "or a refund" after "tax liability".

(B) Subparagraph (B) of section 7482(b)(1) of the 1986 Code is amended by inserting "or a refund" after "tax liability", and by inserting "or refund" after "the liability".

(C) The last sentence of section 7482(b)(1) of the 1986 Code is amended by striking out "petition" the first time it appears and inserting in lieu thereof "initial pleading", and by inserting "or a refund" after "tax liability".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to proceedings commenced in the United States Tax Court on or after the date which is 6 months after the date of the enactment of this Act.

PART II—EXTENSION OF EXPIRING TAX PROVISIONS

SEC. 786. CARRYOVER OF POST-1987 LOW-INCOME HOUSING CREDIT DOLLAR AMOUNTS PERMITTED.

(a) IN GENERAL.—Section 42(h)(6) of the 1986 Code (relating to housing credit dollar amount may not be carried over, etc.), as amended by section 102(l)(14)(A), is amended by adding at the end thereof the following new subparagraph:

"(E) EXCEPTION WHERE 10 PERCENT OF COST INCURRED IN 1ST YEAR.—

"(i) IN GENERAL.—An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which ends the taxable year to which the allocation will 1st apply.

"(ii) QUALIFIED BUILDING.—For purposes of clause (i), the term 'qualified building' means a building—

"(I) more than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of which is incurred before the close of the calendar year in which ends the taxable year to which the allocation will 1st apply, and

"(II) which is a new building (or is treated under subsection (e) as a new building) when placed in service."

(b) CONFORMING AMENDMENT.—Section 42(h)(6)(B) of the 1986 Code, as amended by section 102(l)(14)(A), is amended by striking out "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts allocated in calendar years after 1987.

SEC. 787. EXTENSION OF AUTHORITY TO ISSUE MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES.

(a) BONDS.—

(1) IN GENERAL.—Subparagraph (B) of section 143(a)(1) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" each place it appears and inserting in lieu thereof "June 30, 1989".

(2) SPECIAL RULE.—The date contained in section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, for purposes of any bond issued to refund a bond to which such section 103A(c)(1) applies.

(b) CERTIFICATES.—Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages), as amended by section 113(a)(26) of this Act, is amended by striking out "for any calendar year after 1988" and inserting in lieu thereof "after June 30, 1989".

SEC. 788. EXTENSION AND MODIFICATION OF EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) EXTENSION.—Subsection (d) of section 127 of the 1986 Code (relating to educational assistance programs) is amended by striking out "December 31, 1987" and inserting in lieu thereof "December 31, 1988".

(b) RESTRICTIONS RELATING TO EDUCATION AT THE GRADUATE LEVEL.—

(1) IN GENERAL.—Paragraph (1) of section 127(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

(2) EXCEPTION FOR TEACHING AND RESEARCH ASSISTANTS.—

(A) Paragraph (8) of section 127(c) of the 1986 Code is amended to read as follows:

"(8) SPECIAL RULES FOR TEACHING AND RESEARCH ASSISTANTS.—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, the last sentence of

paragraph (1) of this subsection shall not apply."

(B) Subsection (d) of section 117 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULES FOR TEACHING AND RESEARCH ASSISTANTS.—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase '(below the graduate level)'. The preceding sentence shall not apply to taxable years beginning after December 31, 1988."

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 789. EXTENSION AND MODIFICATION OF EXCLUSION OF AMOUNTS RECEIVED UNDER GROUP LEGAL SERVICES PLANS.

(a) EXTENSION.—Section 120(e) of the 1986 Code is amended by striking out "1987" and inserting in lieu thereof "1988".

(b) LIMITATION ON VALUE OF INSURANCE PROTECTION WHICH MAY BE EXCLUDED.—

(1) IN GENERAL.—Section 120(a) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70."

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 125(e)(2) of the 1986 Code is amended by inserting "or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)" after "section 79".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1987.

SEC. 790. EXTENSION OF SPECIAL STUDENT LOAN POOL ARBITRAGE RULES.

Subsections (c)(2)(B) and (f)(4)(D)(iv) of section 148 of the 1986 Code (relating to arbitrage) are each amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

SEC. 791. EXTENSION OF CERTAIN BUSINESS ENERGY CREDITS.

Each of the following provisions in the table under section 46(b)(2)(A) of the 1986 Code are amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989":

(1) The item relating to the 10 percent credit in clause (viii).

(2) The item relating to the 10 percent credit in clause (ix).

(3) Clause (x).

SEC. 792. EXTENSION AND MODIFICATION OF TARGETED JOBS CREDIT.

(a) 6-MONTH EXTENSION.—Paragraph (4) of section 51(c) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

(b) EXTENSION OF AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Tax Act of 1981 is amended by striking out "and 1988" and inserting in lieu thereof "1988 and 1989".

(c) REDUCTION IN PERCENTAGE OF CREDIT FOR SUMMER YOUTH EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 51(d)(12) of the 1986 Code is amended by striking out clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to individuals who begin work for the employer after December 31, 1988.

SEC. 793. EXTENSION OF RESEARCH CREDIT.

Subsection (h) of section 41 of the 1986 Code (relating to credit for increasing research activities) is amended—

(1) by striking out "December 31, 1988" each place it appears and inserting in lieu thereof "March 31, 1989",

(2) by striking out "January 1, 1989" each place it appears and inserting in lieu thereof "April 1, 1989", and

(3) by adding at the end thereof the following new paragraph:

"(3) COMPUTATION OF RESEARCH EXPENDITURES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), in the case of a taxable year which begins before April 1, 1989, and ends after December 31, 1988, the amount of the qualified research expenditures and basic research payments taken into account under subsection (a) for such taxable year shall be the applicable percentage of the amount of such expenditures and payments made during calendar year 1989.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means the percentage determined by dividing the number of months in the taxable year which occur during the period beginning January 1, 1989, and ending March 31, 1989, by 12."

SEC. 794. EXTENSION AND MODIFICATIONS OF PROVISIONS RELATING TO FINANCIAL INSTITUTIONS.

(a) 6-MONTH EXTENSION.—

(1) REORGANIZATIONS.—Paragraph (1) of section 904(c) of the Reform Act is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

(2) FSLIC FINANCIAL ASSISTANCE.—Paragraph (2)(A) of section 904(c) of the Reform Act is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

(3) NET OPERATING LOSS RULES.—The last sentence of section 382(l)(5)(F) of the 1986 Code is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

(b) APPLICATION OF CERTAIN PROVISIONS TO BANKS.—

(1) SPECIAL RULES FOR REORGANIZATIONS AND NET OPERATING LOSSES.—

(A) Section 368(a)(3)(D) of the 1986 Code (as in effect before the amendment made by section 904(a) of the Reform Act) is amended by adding at the end thereof the following new clause:

"(iv) In the case of a financial institution to which section 585 applies—

"(I) the term 'title 11 or similar case' means only a case in which the applicable authority (which shall be treated as the court in such case) makes the certification described in subclause (II), and

"(II) clause (ii) shall apply to such institution, except that for purposes of clause (ii)(III), the applicable authority must certify that the grounds set forth in such clause (modified in such manner as the Secretary determines necessary because such institution is not an institution to which section 593 applies) exist with respect to such transferor or will exist in the near future in the absence of action by the applicable authority.

For purposes of this clause, the term 'applicable authority' means the Comptroller of the Currency or the Federal Deposit Insurance Corporation, or if neither has the supervisory authority with respect to the transfer, the equivalent State authority."

(B) Subclause (I) of section 382(l)(5)(F)(iii) of the 1986 Code is amended by inserting "(as modified by section 368(a)(D)(iv))" after "section 368(a)(D)(ii)".

(C)(i) The amendment made by subparagraph (A) shall apply to acquisitions after December 31, 1988, and before July 1, 1989.

(ii) The amendment made by subparagraph (B) shall apply to any ownership change occurring after December 31, 1988, and before July 1, 1989.

(2) ASSISTANCE PAYMENTS.—

(A) Section 597(a) of the 1986 Code (as in effect before the amendments made by section 904(b) of the Reform Act) is amended by adding at the end thereof the following new sentence: "Gross income of a bank does not include any amount of money or other property received from the Federal Deposit Insurance Corporation pursuant to section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)), regardless of whether any note or other instrument is issued in exchange therefor."

(B) Section 597(b) of the 1986 Code (as so in effect) is amended by inserting "or bank" after "association".

(C)(i) The heading for section 597 of the 1986 Code (as so in effect) is amended by inserting "or FDIC" after "FSLIC".

(ii) The item relating to section 597 in part II of subchapter H of chapter 1 of the 1986 Code (as so in effect) is amended by inserting "or FDIC" after "FSLIC".

(D) The amendments made by this paragraph shall apply to transfers after December 31, 1988, and before July 1, 1989, except that such amendments shall also apply to transfers after June 30, 1989, pursuant to acquisitions after December 31, 1988, and before July 1, 1989.

(c) CERTAIN TAX ATTRIBUTES REDUCED BY 50 PERCENT OF FINANCIAL ASSISTANCE OF FSLIC AND FDIC.—

(1) IN GENERAL.—Section 597 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(c) REDUCTION OF TAX ATTRIBUTES BY 50 PERCENT OF AMOUNTS EXCLUDABLE UNDER SUBSECTION (a).—

"(1) IN GENERAL.—50 percent of any amount excludable under subsection (a) for any taxable year shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

"(2) TAX ATTRIBUTES REDUCED; ORDER OF REDUCTION.—The reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

"(A) NOL.—Any pre-assistance net operating loss for the taxable year.

"(B) INTEREST.—The amount of any interest with respect to which a deduction is allowable for the taxable year.

"(C) BUILT-IN PORTFOLIO LOSSES.—Recognized built-in portfolio losses for the taxable year.

"(3) PRE-ASSISTANCE NET OPERATING LOSS.—For purposes of paragraph (2)(A)—

"(A) IN GENERAL.—The pre-assistance net operating loss shall be determined in the same manner as a pre-change loss under section 382(d), except that—

"(i) the applicable financial institution shall be treated as the old loss corporation, and

"(ii) the determination date shall be substituted for the change date.

"(B) ORDERING RULE.—The reduction under paragraph (2)(A) shall be made in the

carryovers in the order in which carryovers are taken into account under this chapter for the taxable year.

"(4) RECOGNIZED BUILT-IN PORTFOLIO LOSSES.—For purposes of paragraph (2)(C), recognized built-in portfolio losses shall be determined in the same manner as recognized built-in losses under section 382(h), except that—

"(A) the only assets taken into account shall be the loan portfolio of the applicable financial institution,

"(B) the rules of clauses (i) and (ii) of paragraph (3)(A) shall apply, and

"(C) there shall be no limit on the number of years in the recognition period.

"(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) APPLICABLE FINANCIAL INSTITUTIONS.—The term 'applicable financial institutions' means the domestic building and loan association or bank the financial condition of which was determined by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation to require the financial assistance described in subsection (a).

"(B) DETERMINATION DATE.—The term 'determination date' means the date of the determination under subparagraph (A). Except as provided by the Secretary, any subsequent revision or modification of such determination shall be treated as made on the original determination date.

"(C) TAXABLE ASSET ACQUISITIONS.—In the case of any acquisition of the assets of any applicable financial institution to which section 381 does not apply, paragraph (1) shall not apply to any amount excludable under subsection (a) which are payments made at the time of the acquisition to the person acquiring such assets to make up the difference between the value of such assets and the liabilities assumed.

"(D) CARRYOVERS.—If 50 percent of the amount excludable under subsection (a) for any taxable year exceeds the amount of the tax attributes described in paragraph (2) for such taxable year, then, for purposes of this subsection, the amount excludable under subsection (a) for the succeeding taxable year shall be increased by an amount equal to twice the amount of such excess.

"(E) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any transfer—

(A) after December 1, 1988, and before July 1, 1989, unless such transfer is pursuant to an acquisition occurring before January 1, 1989, and

(B) after June 30, 1989, if such transfer is pursuant to an acquisition occurring after December 31, 1988, and before July 1, 1989.

PART III—OTHER SUBSTANTIVE PROVISIONS

SEC. 795. AMENDMENTS TO UNIFORM CAPITALIZATION RULES.

(a) TREATMENT OF CERTAIN PRODUCERS OF CREATIVE PROPERTY.—Section 263A of the 1986 Code is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) EXEMPTION FOR FREE LANCE AUTHORS, PHOTOGRAPHERS, AND ARTISTS.—

"(1) IN GENERAL.—Nothing in this section shall require the capitalization of any qualified creative expense.

"(2) QUALIFIED CREATIVE EXPENSE.—For purposes of this subsection, the term 'qualified creative expense' means any expense—

"(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

"(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) WRITER.—The term 'writer' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

"(B) PHOTOGRAPHER.—The term 'photographer' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

"(C) ARTIST.—

"(i) IN GENERAL.—The term 'artist' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

"(ii) CRITERIA.—In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

"(I) The originality and uniqueness of the item created (or to be created).

"(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

"(D) TREATMENT OF CERTAIN PERSONAL SERVICE CORPORATIONS.—

"(i) IN GENERAL.—In the case of a personal service corporation, this subsection shall apply to any expense of such corporation which directly relates to the activities of the qualified employee-owner in the same manner as if such expense were incurred by such employee-owner.

"(ii) QUALIFIED EMPLOYEE-OWNER.—The term 'qualified employee-owner' means any individual who is an employee-owner of the personal service corporation and who is a writer, photographer, or artist, but only if substantially all of the stock of such corporation is owned by such individual and members of his family (as defined in section 267(c)(4)).

"(iii) PERSONAL SERVICE CORPORATION.—For purposes of this subparagraph, the term 'personal service corporation' means any personal service corporation (as defined in section 269A(b))."

(b) TREATMENT OF ANIMALS PRODUCED IN FARMING BUSINESS.—

(1) IN GENERAL.—Subparagraph (A) of section 263A(d)(1) of the 1986 Code (relating to exception for farming businesses) is amended to read as follows:

"(A) IN GENERAL.—This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

"(i) Any animal.

"(ii) Any plant which has a preproductive period of 2 years or less."

(2) CONFORMING AMENDMENTS.—

(A) The heading of paragraph (1) of section 263A(d) of the 1986 Code is amended to read as follows:

"(1) SECTION NOT TO APPLY TO CERTAIN PROPERTY.—".

(B) Subsections (d)(3) and (e) of section 263A of the 1986 Code are each amended by striking out "or animal" each place it appears.

(c) TREATMENT OF SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURES.—

(1) IN GENERAL.—Paragraph (3) of section 168(e) of the 1986 Code (relating to classification of property) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraphs:

"(D) 10.5-YEAR PROPERTY.—The term '10.5-year property' means any single purpose agricultural or horticultural structure (within the meaning of section 48(p))."

(2) TECHNICAL AMENDMENTS.—

(A) The table contained in paragraph (1) of section 168(c) of the 1986 Code (as amended by title I) is amended by striking out the item relating to 10-year property and inserting in lieu thereof the following new items:

"10-year property.....	10 years
10.5-year property.....	10.5 years".

(B) Subparagraph (C) of section 168(e)(3) of the 1986 Code is amended by adding "and" at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii).

(C) The table contained in subparagraph (B) of section 168(g)(3) of the 1986 Code is amended by striking out all that follows the item relating to subparagraph (C)(i) and inserting in lieu thereof the following new items:

"(D)	10.5
(E)(i).....	24
(E)(ii).....	24
(F).....	50."

(D) The table contained in subparagraph (A) of section 467(e)(3) of the 1986 Code is amended by striking out the item relating to 10-year property and inserting in lieu thereof the following new items:

"10-year property.....	10 years
10.5-year property.....	10.5 years".

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to property placed in service after December 31, 1988.

(B) EXCEPTION.—The amendments made by this subsection shall not apply to any property if such property is placed in service before January 1, 1990, and if such property—

(i) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

(ii) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.

(d) TREATMENT OF PROPERTY USED IN A FARMING BUSINESS.—

(1) IN GENERAL.—Paragraph (2) of section 168(b) of the 1986 Code (as amended by title I) is amended by striking out "or" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) any property used in a farming business (within the meaning of section 263A(e)(4)), or".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made

by this section shall apply to property placed in service after December 31, 1988.

(B) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before July 1, 1989, and if such property—

(i) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

(ii) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in subsections (c) or (d) or this paragraph, the amendments made by this section shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986.

(2) SUBSECTION (b).—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to costs incurred after December 31, 1988, in taxable years ending after such date.

(B) REVOCATION OF ELECTION.—If the taxpayer made an election under section 263A(d)(3) of the 1986 Code for a taxable year beginning before January 1, 1989, such taxpayer may, without the consent of the Secretary of the Treasury or his delegate, revoke such election effective for the taxpayer's 1st taxable year beginning after December 31, 1988.

SEC. 796. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) GENERAL RULE.—For purposes of sections 861(b), 862(b), and 863(b) of the 1986 Code, qualified research and experimental expenditures shall be allocated and apportioned as follows:

(1) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

(2) In the case of any qualified research and experimental expenditures (not allocated under paragraph (1)) to the extent—

(A) that such expenditures are attributable to activities conducted in the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

(B) that such expenditures are attributable to activities conducted outside the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

(3) The remaining portion of qualified research and experimental expenditures (not allocated under paragraphs (1) and (2)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall be at least 30 percent of the amount which would be so apportioned on the basis of gross sales.

(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term "qualified research and experimental expenditures" means amounts which are research and experimental expenditures within the meaning of section 174 of the 1986 Code. For purposes of this subsection, rules similar to the rules of subsection (c) of section 174 of the 1986 Code shall apply.

(c) SPECIAL RULES FOR EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN SPACE, ETC.—

(1) IN GENERAL.—Any qualified research and experimental expenditures described in paragraph (2)—

(A) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

(B) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

(2) DESCRIPTION OF EXPENDITURES.—For purposes of paragraph (1), qualified research and experimental expenditures are described in this paragraph if such expenditures are attributable to activities conducted—

(A) in space,

(B) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

(C) in Antarctica.

(d) AFFILIATED GROUP.—

(1) Except as provided in paragraph (2), the allocation and apportionment required by subsection (a) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of section 864 of the 1986 Code) were a single corporation.

(2) For purposes of the allocation and apportionment required by subsection (a)—

(A) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E) of the 1986 Code); and

(B) dividends from an electing corporation,

shall not be taken into account, except that this paragraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) of the 1986 Code is not in effect.

(3) The qualified research and experimental expenditures taken into account for purposes of subsection (a) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I) of the 1986 Code).

(4) The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by paragraph (3).

(5) Paragraph (6) of section 864(e) of the 1986 Code shall not apply to qualified research and experimental expenditures.

(e) YEARS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—Except as provided in this subsection, this section shall apply to the taxpayer's 1st taxable year beginning after August 1, 1987.

(2) REDUCTION IN AMOUNTS TO WHICH SECTION APPLIES.—Notwithstanding paragraph (1), this section shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in paragraph (1) which bears the same ratio to the total amount of such expenditures as—

(A) the lesser of 4 months or the number of months in the taxable year, bears to

(B) the number of months in the taxable year.

SEC. 797. ELECTION TO BE TREATED AS DOMESTIC CORPORATION.

(a) IN GENERAL.—Section 953 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) ELECTION BY FOREIGN INSURANCE COMPANY TO BE TREATED AS DOMESTIC CORPORATION.—

"(1) IN GENERAL.—If—

"(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting '25 percent or more' for 'more than 50 percent' and by using the definition of United States shareholder under 953(c)(1)(A)),

"(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

"(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

"(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty,

for purposes of this title, such corporation shall be treated as a domestic corporation.

"(2) PERIOD DURING WHICH ELECTION IS IN EFFECT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(B) TERMINATION.—If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

"(3) TREATMENT OF LOSSES.—If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss (as defined in section 1503(d)).

"(4) EFFECT OF ELECTION.—

"(A) IN GENERAL.—For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

"(B) EXCEPTION FOR PRE-1988 EARNINGS AND PROFIT.—

"(i) IN GENERAL.—Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be included in the gross income of the persons holding stock in such corporation by reason of subparagraph (A).

"(ii) TREATMENT OF DISTRIBUTIONS.—For purposes of this title, any distribution made by a corporation to which an election under paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

"(iii) CERTAIN RULES TO CONTINUE TO APPLY TO PRE-1988 EARNINGS.—The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a corporation to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

"(iv) SPECIFIED PROVISIONS.—The provisions specified in this clause are:

"(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

"(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A).

"(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

"(5) EFFECT OF TERMINATION.—For purposes of section 367, if—

"(A) an election is made by a corporation under paragraph (1) for any taxable year, and

"(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

"(6) ADDITIONAL TAX ON CORPORATION MAKING ELECTION.—

"(A) IN GENERAL.—If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX.—The amount of tax determined under this paragraph shall be equal to the lesser of—

"(i) ¾ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or

"(ii) $1,500,000."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 798. REPEAL OF SECRETARIAL AUTHORITY TO PRESCRIBE CLASS LIVES.

Paragraph (1) of section 168(i) of the 1986 Code is amended—

(1) by adding at the end of subparagraph (B) the following new sentence: "Nothing in this subparagraph shall authorize the Secretary to prescribe class lives which are longer than the lives determined under subparagraph (A).", and

(2) by striking out subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

SEC. 799. REVERSION OF QUALIFIED PENSION PLAN ASSETS.

(a) TEMPORARY INCREASE IN EXCISE TAX ON REVERSION.—

(1) IN GENERAL.—In the case of any employer reversion from a qualified plan received after July 26, 1988, and before May 1, 1989, section 4980(a) of the Internal Revenue Code of 1986 shall be applied by substituting "60 percent" for "10 percent".

(2) CASES WHERE NOTICE GIVEN.—Paragraph (1) shall not apply to any reversion pursuant to a plan termination if—

(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before July 27, 1988;

(B) with respect to plans subject to title I of such Act, a notice of intent to reduce future accruals required under section 204(h) of such Act was provided to participants in connection with the termination before July 27, 1988; or

(C) with respect to plans not subject to title I or title IV of such Act, the board of directors of the employer approved the termination or the employer took other binding action before July 27, 1988.

(b) TIME FOR PAYMENT OF TAX.—

(1) IN GENERAL.—Section 4980(c) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraph:

"(4) TIME FOR PAYMENT OF TAX.—For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to reversions received on or after May 1, 1989.

TITLE VIII—MEDICARE AND MEDICAID MINOR AND TECHNICAL AMENDMENTS

SEC. 801. HOSPITAL PAYMENTS FOR CATASTROPHIC ILLNESS.

(a) IN GENERAL.—Section 104(c)(2) of the Medicare Catastrophic Coverage Act of 1988 is amended—

(1) by striking "cost reporting periods beginning on or after October 1, 1988" and inserting "portions of cost reporting periods occurring on or after January 1, 1989"; and

(2) by inserting before the period at the end the following: ", without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the Medicare Catastrophic Coverage Act of 1988.

SEC. 802. TREATMENT OF CERTAIN HOSPITALS AS RURAL HOSPITALS FOR CERTAIN PURPOSES.

(a) IN GENERAL.—Section 1886(d)(8) of the Social Security Act (42 U.S.C. 1395ww(d)(8)) is amended by adding at the end of subparagraph (C) the following new sentence: "For purposes of computing the wage indices under this section, hospitals to which subparagraph (B) applies shall be treated as rural hospitals.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to discharges occurring on or after October 1, 1989.

SEC. 803. DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS.

(a) IN GENERAL.—Section 429(a) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "up to" each place it appears and inserting in lieu thereof "at least".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the Medicare Catastrophic Coverage Act of 1988.

SEC. 804. ELECTION OF PERSONNEL POLICY FOR COMMISSION EMPLOYEES.

(a) IN GENERAL.—With respect to employees of the Prospective Payment Assessment Commission as described in section 1886(e)(2) of the Social Security Act (42 U.S.C. 1395ww(e)(2)) hired before December 22, 1987, such employees shall have the option to elect within 60 days of the date of enactment of this Act to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987 or under the employees coverage provided under section 1886(e)(6)(D) of the Social Security Act.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of enactment of this Act.

SEC. 805. INCREASE IN AUTHORIZATION FOR THE PATIENT OUTCOME ASSESSMENT RESEARCH PROGRAM.

(a) IN GENERAL.—Section 1875(c)(3) of the Social Security Act (42 U.S.C. 1395ll(c)(3)) is amended to read as follows:

"(3)(A) For purposes of carrying out the research program, there are authorized to be appropriated—

"(i) from the Federal Hospital Insurance Trust Fund two-thirds of the amount specified in subparagraph (B), and

"(ii) from the Federal Supplementary Medical Insurance Trust Fund one-third of the amount specified in subparagraph (B).

"(B) The amount specified in this subparagraph is—

"(i) $7,500,000 for fiscal year 1988,

"(ii) $10,000,000 for fiscal year 1989,

"(iii) $20,000,000 for fiscal year 1990, and

"(iv) $30,000,000 for fiscal year 1991.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of enactment of this Act.

SEC. 806. PAYMENT ADJUSTMENT TO ORGANIZATIONS WITH RISK-SHARING CONTRACTS.

(a) IN GENERAL.—Any organization having a risk-sharing contract in effect under section 1876(g) of the Social Security Act on or after January 1, 1988, and before December 31, 1988, may submit to the Secretary of Health and Human Services a revised adjusted community rate for calendar year 1988, reflecting any increase in such rate resulting from the Secretary's manual transmittal clarifying eligibility guidelines for extended care services. If the Secretary approves such revised rate, the Secretary shall make additional payment to such eligible organization equal to the increase in such rate for such year. The Secretary shall make a determination with respect to such revised rate within 90 days after the revised rate is submitted by the eligible organization.

(b) EFFECTIVE DATE.—Subsection (a) shall become effective with respect to risk-sharing contracts in effect on or after January 1, 1988.

SEC. 807. FEE SCHEDULE FOR PAYMENTS TO CERTIFIED REGISTERED ANESTHETISTS.

(a) IN GENERAL.—Section 1833(l)(3)(B) of the Social Security Act (42 U.S.C. 1395(l)(3)(B)) is amended by inserting "plus applicable coinsurance" after "would have been paid".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective as if included in the amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986.

SEC. 808. CLARIFICATION OF COVERED CERTIFIED NURSE-MIDWIFE SERVICES.

(a) IN GENERAL.—Section 1861(gg)(1) of the Social Security Act (42 U.S.C.

1395x(gg)(1)) is amended by adding at the end thereof ", whether or not such services are provided during the maternity cycle".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective as if included in the amendments made by section 4073 of the Omnibus Budget Reconciliation Act of 1987.

SEC. 809. COVERAGE OF PSYCHOLOGIST SERVICES WHEN PROVIDED ON-SITE AT A COMMUNITY HEALTH CENTER OR OFF-SITE AS PART OF A TREATMENT PLAN.

(a) IN GENERAL.—Subsection (ii) of section 1861 of the Social Security Act (42 U.S.C. 1395x(ii)) is amended by striking "(as defined by the Secretary) at a community mental health center (as such term is used in the Public Health Service Act)" and inserting in lieu thereof "(as defined by the Secretary) on-site at a community mental health center (as such term is used in the Public Health Service Act), and such services necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective as if included in the amendments made by section 4077(b) of the Omnibus Budget Reconciliation Act of 1987.

SEC. 810. TRIP FEES FOR CLINICAL LABORATORIES.

(a) IN GENERAL.—Section 1833(h)(3) of the Social Security Act is amended by adding at the end thereof the following new sentence:

"In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall allow a laboratory to bill for such expenses on the basis of either (i) a flat fee per sample collection or (ii) the number of miles traveled and the personnel costs associated with the collection of each individual sample.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1989.

(c) BUDGET NEUTRALITY.—The Secretary shall instruct carriers to modify fees in accordance with the amendment made by subsection (a) in such a manner that the total cost of such fees is the same as would have been the case without such amendment.

SEC. 811. REQUIREMENT OF PHYSICIAN CARE AND PLAN WITH RESPECT TO OUTPATIENT PHYSICAL THERAPY SERVICES LIMITED TO THE PROVISION OF SUCH SERVICES TO MEDICARE RECIPIENTS.

(a) IN GENERAL.—Section 1861(p) of the Social Security Act (42 U.S.C. 1395x(p)) is amended by adding at the end thereof the following new sentence: "The requirements of this subsection that an individual be under the care of a physician, and that the services be provided pursuant to a plan that is established and reviewed by a physician, shall apply only to individuals with respect to whom payment may be made under this title.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to services provided after December 31, 1988.

SEC. 812. DELAY IN ISSUANCE OF FINAL REGULATIONS CONCERNING THE USE OF VOLUNTARY CONTRIBUTIONS OR PROVIDER-PAID TAXES BY STATES TO RECEIVE FEDERAL MATCHING FUNDS.

The Secretary of Health and Human Services shall not issue any final regulation prior to February 15, 1989, changing the treatment of voluntary contributions or provider-paid taxes utilized by States to receive Federal matching funds under title XIX of the Social Security Act.

SEC. 813. FORMULA MODIFICATION FOR DETERMINING STATE EXPENDITURES UNDER THE MEDICAID LONG-TERM CARE WAIVER PROGRAM.

(a) IN GENERAL.—Section 1915(d)(5)(B) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by adding a new paragraph (6) as follows:

"(6) The Secretary shall adjust the projected amount determined under paragraph (5)(B) with respect to the State's expenditure for medical assistance under this title for skilled nursing facility services, intermediate care facility services, and home and community-based services for individuals who have attained the age of 65 for the base year to reflect the enactment of any amendment to this title which results in increased costs of providing such services, or requires additional long-term care services, under this title subsequent to the end of such base year.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective with respect to the determination of State expenditures beginning in waiver year 1989.

SEC. 814. EXTENSION OF TIME PERIOD FOR CERTAIN INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED TO SUBMIT PLANS OF CORRECTION OR REDUCTION.

(a) IN GENERAL.—Section 1922 of the Social Security Act (42 U.S.C. 1396r-3) is amended—

(1) in the first sentence by striking "residents" and inserting in lieu thereof "residents (including failure to provide active treatment),";

(2) in subsection (c)(5) by inserting ", and to provide active treatment for," after "safety of"; and

(3) in subsection (f) by striking "within 3 years" and all that follows through the period and by inserting in lieu thereof "by January 25, 1991.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the date of enactment of this Act, and shall apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of enactment of this Act.

SEC. 815. NURSING FACILITY DECERTIFICATION HEARING PROCEDURES.

(a) IN GENERAL.—Paragraph (2) of section 1910(b) of the Social Security Act (42 U.S.C. 1396i(b)) is amended by striking out the first sentence thereof and inserting in lieu thereof:

"Any skilled nursing facility or intermediate care facility which is dissatisfied with a determination by the Secretary that it no longer qualifies as a skilled nursing facility or intermediate care facility for purposes of this title, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 205(b). At such hearing, the facility may submit to the Secretary evidence of compliance based on Federal or State surveys conducted after the determination under paragraph (1). The Secretary shall take into account such evidence, but such compliance shall not preclude a finding that the facility's eligibility be terminated. The Secretary shall also take into account the facility's record of noncompliance and the extent and likely duration of such compliance. Such facility shall also be entitled to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of enactment of this Act.

TITLE IX—MISCELLANEOUS INCOME SECURITY AMENDMENTS

Subtitle A—National Academy of Social Insurance

SEC. 901. CHARTER.

The National Academy of Social Insurance, organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a charter.

SEC. 902. POWERS.

The National Academy of Social Insurance (in this subtitle referred to as the "Academy") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

SEC. 903. OBJECTS AND PURPOSES OF CORPORATION.

The objects and purposes for which the Academy is organized shall be those provided in its articles of incorporation and shall include—

(1) promoting an informed and nonpartisan study of, and education with respect to, social insurance,

(2) bringing together experts with diverse backgrounds to consider social insurance issues in an interdisciplinary way,

(3) assisting in the development of social insurance scholars and administrators,

(4) encouraging research and studies on topics of relevance to social insurance, and

(5) sponsoring seminars and other public meetings.

SEC. 904. SERVICE OF PROCESS.

With respect to service of process, the Academy shall comply with the laws of the State or States in which it is incorporated and the State or States in which it carries on its activities in furtherance of its corporate purposes.

SEC. 905. MEMBERSHIP.

Eligibility for membership in the Academy and the rights and privileges of members shall be as provided in the bylaws of the corporation.

SEC. 906. BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES.

The board of directors of the Academy and the responsibilities thereof shall be as provided in the articles of incorporation of the Academy and in conformity with the laws of the State or States in which it is incorporated.

SEC. 907. OFFICERS OF CORPORATION.

The officers of the Academy, and the election of such officers, shall be as is provided in the articles of incorporation of the Academy and in conformity with the laws of the State or States wherein it is incorporated.

SEC. 908. RESTRICTIONS.

(a) IN GENERAL.—

(1) No part of the income or assets of the corporation shall inure to any member, officer, or director of the Academy or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers and members of the Academy or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(2) The Academy shall not make any loan to any officer, director, or employee of the corporation.

(3) The Academy and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(4) The Academy shall have no power to issue any shares of stock nor to declare or pay any dividends.

(5) The Academy shall not claim congressional approval or Federal Government authority for any of its activities, other than by mutual agreement.

(b) STATUS.—The Academy shall retain and maintain its status as a corporation organized and incorporated under the laws of the District of Columbia.

SEC. 909. LIABILITY.

The Academy shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SEC. 910. BOOKS AND RECORDS; INSPECTION.

The Academy shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the Academy involving any of its members, the board of directors, or any committee having authority under the board of directors. The Academy shall keep at its principal office a record of the names and addresses of all members having the right of vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

SEC. 911. AUDIT OF FINANCIAL TRANSACTIONS.

The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal laws", approved August 30, 1964 (36 U.S.C. 1101), is amended by inserting after paragraph (70) the following:

"(71) National Academy of Social Insurance.".

SEC. 912. ANNUAL REPORT.

The Academy shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 911 of this subtitle. The report shall not be printed as a public document.

SEC. 913. RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER.

The right to alter, amend, or repeal this subtitle is expressly reserved to the Congress.

SEC. 914. DEFINITION OF "STATE".

For purposes of this subtitle, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 915. TAX-EXEMPT STATUS.

The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code. If the corporation fails to maintain such status, the charter granted hereby shall expire.

SEC. 916. TERMINATION.

If the corporation shall fail to comply with any of the restrictions or provisions of this subtitle the charter granted hereby shall expire.

Subtitle B—Foster Care Independent Living Initiatives

SEC. 921. FOSTER CARE INDEPENDENT LIVING INITIATIVES.

(a) EXTENSION OF INDEPENDENT LIVING PROGRAM.—Section 477 of the Social Security Act (42 U.S.C. 677) is amended—

(1) by striking "1987 and 1988" in subsections (a) and (e)(1) and inserting "1987, 1988, and 1989";

(2) by striking "for fiscal years 1988" and all that follows in subsection (c) and inserting "for the fiscal year 1988 or 1989, such description and assurances must be submitted prior to January 1 of such fiscal year.";

(3) by striking "Not later than March 1, 1988" in subsection (g)(1) and inserting "Not later than the first January 1 following the end of each fiscal year";

(4) by inserting "during such fiscal year" in subsection (g)(1) after "carried out";

(5) by striking "(2) Not later than July 1, 1988," in subsection (g)(2) and inserting the following:

"(2)(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

"(B) Not later than March 1, 1989,"; and

(6) by striking "the fiscal year 1987" in subsection (g)(2) and inserting "fiscal years 1987 and 1988".

(b) PERMISSION TO EXPEND UNOBLIGATED FUNDS APPROPRIATED FOR 1987 IN 1988 AND 1989.—Subsection (f) of section 477 of such Act (42 U.S.C. 677(f)) is amended by inserting after and below paragraph (3) the following:

"Notwithstanding paragraph (3), payments made to a State under this section for fiscal year 1987 and unobligated may be expended by such State in fiscal years 1988 and 1989.".

(c) INCLUSION IN INDEPENDENT LIVING PROGRAM OF NON-AFDC FOSTER CARE CHILDREN.—Subsection (a) of section 477 of such Act (42 U.S.C. 677(a)) is amended—

(1) by inserting "(1)" before "Payments";

(2) by striking "children" and all that follows through "age 16," and inserting "children described in paragraph (2) who have attained age 16"; and

(3) by adding at the end the following new paragraph:

"(2) A program established and carried out under paragraph (1)—

"(A) shall be designed to assist children with respect to whom foster care maintenance payments are being made by the State under this part, and

"(B) may at the option of the State also include any or all other children in foster care under the responsibility of the State.".

(d) INCLUSION IN INDEPENDENT LIVING PROGRAM OF CERTAIN FORMER FOSTER CARE CHILDREN.—Paragraph (2) of section 477(a) of such Act (42 U.S.C. 677(a)(2)) (as added by subsection (c) of this section) is further amended—

(1) by striking "and" in subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ", and"; and

(3) by adding at the end the following new subparagraph:

"(C) may at the option of the State also include any child to whom foster care maintenance payments were previously made by a State under this part and whose payments were discontinued on or after the date such child attained age 16, and any child who previously was in foster care described in subparagraph (B) and for whom such care was discontinued on or after the date such child attained age 16, but such child may not be so included after the end of the 6-month period beginning on the date of discontinuance of such payments or care; and a written transitional independent living plan of the type described in subsection (d)(6) shall be developed for such child as a part of such program.".

(e) DETERMINATION OF SERVICES NEEDED FOR TRANSITION TO INDEPENDENT LIVING.—Subparagraph (C) of section 475(5) of such Act (42 U.S.C. 675(5)(C)) is amended by inserting "and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living" before the semicolon.

(f) LIMITATION ON USE OF FUNDS.—Paragraph (3) of section 477(e) of such Act (42 U.S.C. 677(e)(3)) is amended by adding at the end the following: "Amounts payable under this section may not be used for the provision of room or board".

(g) EFFECTIVE DATE.—(1) The amendments made by subsections (a), (b), and (e) shall become effective on October 1, 1988, but only to the extent that funds therefor are provided in Appropriation Acts.

(2) The amendments made by subsections (c), (d), and (f) shall become effective on the date of the enactment of this Act.

NOTICES OF HEARINGS

SUBCOMMITTEE ON AGRICULTURAL CREDIT

Mr. LEAHY. Mr. President, I wish to announce that the Subcommittee on Agricultural Credit of the Committee on Agriculture, Nutrition, and Forestry will hold a hearing on the Farmers Home Administration's implementation of the Agricultural Credit Act of 1987 on September 30, 1988, at 9:30 a.m. in room 332, Russell Senate Office Building.

Senator DAVID BOREN will preside. For further information please contact Kellye Eversole of the subcommittee staff at 224-5207.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY. Mr. President, I wish to announce that the Committee on Agriculture, Nutrition, and Forestry will hold a hearing on Wednesday, September 28, 1988, at 9:30 a.m. in SR 332 to receive testimony on current food prices in the United States.

For further information, please contact Bob Young of the committee staff at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON WAR POWERS

Mr. BYRD. Mr. President, I ask unanimous consent that the Special Subcommittee on War Powers of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, September 16, to hold a hearing on the War Powers Resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Commit-

tee on Governmental Affairs be authorized to meet on Friday, September 16, 1988, for a hearing on the nominations of James H. Atkins, Stephen E. Bell, and John David Davenport, nominees to be a member of the Federal Retirement Thrift Investment Board; and Bert H. Mackie, nominee to be Governor of the U.S. Postal Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Hazardous Wastes and Toxic Substances and the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Friday, September 16, to conduct a hearing on the greenhouse effect and policies to mitigate adverse climate change.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Surface Transportation, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on September 16, 1988, to hold a hearing on the issue of State taxation of interstate transportation.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, September 16, to hold a nomination hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

RADON

● Mr. BRADLEY. Mr. President, in the past week, we have heard alarming news from the Environmental Protection Agency about the health dangers radon gas trapped in homes can present. Unfortunately, in New Jersey, this news is not new at all. The State of New Jersey discovered early on the extent of radon contamination in homes.

The indoor radon contamination was first discovered by the EPA in the New Jersey communities of Montclair, Glen Ridge, and West Orange, and was most probably a result of improper disposal of radium years ago. A separate concern is an area where radon has been found to occur naturally. This area in Pennsylvania, northern New Jersey, and southern New York is known as the Reading Prong. Lately, high levels of radon contamination have been detected in some houses located in Warren County but outside the prong.

I would like to draw my colleagues' attention to the following article which appeared in the New York Times on September 15. The example that New Jersey officials have set in Clinton shows that the radon story need not have a disastrous ending. I hope that officials in other States will use New Jersey's success as a model for their own radon remediation efforts.

The article follows:

THE JERSEY VILLAGE THAT FOUGHT RADON WITH FANS AND WON

(By Robert Hanley)

CLINTON, NJ, Sept. 13.—The radon scare is old news in this village 15 miles from the Pennsylvania border. With much of the country just being warned about the radioactive gas and the threat of lung cancer it poses, this square-mile community of 2,000 has met and, by all accounts, conquered the worst residential radon hotspot known in the United States.

"We are the quintessential success story that you can beat radon," said Mayor Robert A. Nulman. "You test your house to see if there's a problem, and if there is, the good news is: there is a way out. You fix it, just like you would a roof leak or termites."

20,000 DEATHS A YEAR

On Monday, Federal officials warned the nation that a new seven-state survey had shown the radon threat is greater than had been recognized and may cause 20,000 lung-cancer deaths a year. They urged that all houses and apartments up to the second floor be tested for the colorless, odorless gas, which seeps out of uranium in the geological formations under the houses.

Clinton's troubles developed in March 1986, with the discovery of a cluster of radon-contaminated homes in Clinton Knolls, a pleasant six-square-block neighborhood of split-level, ranch, and Cape Cod houses built atop an ancient limestone cliff that is laced with uranium.

Radon levels in some homes were so high as to have been unimaginable. Six had readings over 1,000 picocuries of radon per liter of air. The Federal safety standard for homes is 4 picocuries per liter. Exposure to 200 carries the same risk as smoking four packs of cigarettes a day.

Experts from the Federal and state governments, themselves groping for solutions to radon, rushed to the neighborhood. Averting a panic was their first order of business. Then they turned Clinton Knolls into a research, and learning laboratory. The idea was to design, install and refine ventilating systems to suck the radon gas from beneath homes and expel it before it could seep into houses through cellar cracks.

WORST 10 HOMES PICKED

Ten homes with the worst readings ranging from 400 to over 3,000 picocuries—were selected for a pilot project. Scientists and contractors, learning as they went, installed venting systems in them free of charge.

Another 20 homes were analyzed and venting designs were prepared and given to their owners, who in turn hired contractors to install them. Some homeowners, like Larry Kaplan, a chemist, took crash courses on radon remediation and rigged their own vents with Environmental Protection Agency guidance and then pitched in to help neighbors install their own.

In a typical system, four-inch plastic pipes are pierced through the basement floor into the gravel underneath the house, or laid in the gravel parallel to the foundation and run through the basement wall. Connected pipes lead up through the house to a roof fan, which sucks the radon-laden air out of the gravel and blows it out at rooftop-level, where the wind dissipates it.

With scientists having tinkered and reviewed and monitored for months, the 30 homes are now at or near the 4 picocurie level, according to Alfred B. Craig, head of radon research at the E.P.A.'s Air & Energy Engineering Research Laboratory in Research Triangle Park, N.C.

NO HEALTH PROBLEMS YET

In all, 105 Clinton Knolls homes had readings above 4 picocuries in early 1986. Residents now say that most have had vents installed and they are near or below the standard.

No health problems linked to radon levels have yet been found in Clinton, but it may take years for cancers to show up.

The lessons learned here will be applied nationwide now, Mr. Craig said. His staff has relied on those designs to fix homes with readings from 4 to 220 picocuries elsewhere in New Jersey and in New York, Pennsylvania, Maryland, Ohio, Tennessee, Alabama and Florida.

"I don't think there's any house made that can't be fixed," Mr. Craig said. "Most can be remediated in the $500 to $2,000 range."

Mayor Nulman cringes now while recalling TV and newspaper accounts in early 1986 that predicted mass evacuations and Clinton Knolls' reduction to a ghost town.

"Radon hasn't affected our housing market at all," he insisted.

Some people have moved, but those who have stayed insist that the neighborhood's white collar professionals have always been transient and prone leaving for other jobs. Today, Clinton Knolls, which is 60 miles west of Manhattan, is vibrant, bustling with young children and teen-agers.

Mr. Craig and other scientists offer high praise for residents and Mayor Nulman.

"He did an excellent job getting people aware and involved without panicking them," said Dr. Gerald P. Nicholls, head of New Jersey's Bureau of Radiation Protection.

"Clinton is a super, super little town," Mr. Craig said. "An esprit de corps developed that was remarkable to see. And it could easily have gone the other way into a panic situation."●

FHA ASSET SALES

● Mr. D'AMATO. Mr. President, I rise today in support of the McKinney Homeless Act. As ranking Republican of the Housing Subcommittee of the Banking Committee, I am particularly concerned with efforts to house homeless individuals and families of our Nation.

It appears that there is some confusion relating to a provision in title V of the McKinney Act addressing the use of Federal surplus property to house the homeless.

As I recall, this provision was placed in the McKinney Homeless Act by the Government Affairs Committee, which has jurisdiction over the General Services Administration. The General Services Administration administers surplus Federal properties. The committee placed this provision in the bill so that available Federal buildings that were closed down, underutilized, or not in use for some other reason could be used to provide shelter for homeless individuals and families.

I understand that these facilities have not been a major source of housing for the homeless, primarily because Federal agencies have not been particularly energetic in meeting this goal.

Since the passage of the act, only four Federal buildings have been freed for such use. Clearly there are more than four underutilized Federal buildings in the Nation. I am embarrassed as a U.S. Senator that this Government cannot make a more concerted effort to assist the homeless. I hope the Government Affairs Committee will take a serious look at this situation and, perhaps, devise an alternative mechanism for making the best possible use of underutilized Federal properties.

It is puzzling, by the way, that none of these 12 buildings have come from the Department of Housing and Urban Development. It's difficult to believe that HUD cannot find some available properties or, at a minimum, provide guidelines for the use of available properties for the homeless. HUD should address this situation immediately.

Having said all that, I am nevertheless disturbed at the proposal that FHA properties be used for housing the homeless. This proposal would create major budgetary problems for the Housing Subcommittee. Furthermore, to my knowledge the subcommittee never discussed such use of these properties. The intent of the surplus property provision in the McKinney Act clearly stemmed from an interest on the part of the Government Affairs Committee to use surplus properties within the jurisdiction of that committee, not that of any other committee. Were FHA properties meant to be included in this provision, I believe there would be a clear record of recollection of the committees considering the matter.

I hope the conferees will address this issue in a conscientious and responsible manner. I want to make sure that we help the homeless and preserve homeownership opportunities for first-time homebuyers.●

NATIONAL HISPANIC HERITAGE WEEK

● Mr. BINGAMAN. Mr. President, this is "National Hispanic Heritage Week," a week during which we celebrate the many important contributions of Hispanics to our country.

President Lyndon B. Johnson first proclaimed "National Hispanic Heritage Week" in 1968. His proclamation drew attention to the important role Hispanics have played in building our Nation, from the great Hispanic explorers who ventured into the unknown frontiers of the New World to their descendants who settled and developed many cities and towns throughout the South and West. These cities and towns, proudly bearing Spanish names, are a continuing testament to the influence of these Hispanic pioneers. The capitol of my home State of New Mexico, Santa Fe, is just one example.

This week we pause to look back on the discoveries of Christopher Columbus and his Spanish fleet, the great expeditions of Francisco Vasquez de Coronado, and the many other landmark contributions of celebrated Hispanic pioneers. Yet, we also turn our attention to the increasing impact of their modern-day descendants on our society today. The U.S. Census Bureau estimated that there were more than 18 million Hispanics in our country in 1986, a jump of one-third since 1980. In my own State of New Mexico, Hispanics constitute 38 percent of the total population, the largest percentage of any State in the country. Everywhere—in the arts, in entertainment, in our schools, in businesses, in Government, and in all other sectors of our society—we are witnessing an explosion of Hispanic leadership and influence.

The growing presence of Hispanics demands that we not only appreciate their contributions but also their needs. Unfortunately, statistics show that illiteracy and dropout rates among Hispanics are disproportionate to their population. We must find ways to solve these problems. We simply cannot afford to ignore the toll that illiteracy and lack of education take both on individual well-being and on the economic well-being of our country.

We must first make a commitment to helping those Hispanics who are not proficient in English. They simply cannot achieve their full potential in this country without English language skills. Expanding English literacy programs, programs such as those established by legislation I authored and which became law this year, is one step toward that goal. But the success of those programs depends on the commitment of many individuals—educators, parents, Government officials, and communities.

Improving educational opportunities among Hispanics also demands a strong commitment from all of us, and most importantly, from educators. I was awed and inspired by the dedication of one teacher in California, Mr. Jaime Escalante, whose story is told in the recently released film, "Stand and Deliver." This film told the true story of one highly committed high school math teacher who instilled in a group of disenchanted East Los Angeles Hispanic high school students the "ganas," or desire, to learn and to achieve. Thanks to his untiring efforts, all 18 students in this group passed the advanced placement calculus test, a feat so remarkable that it was immediately challenged by the Educational Testing Service. The students were retested months after their final calculus class—they still passed, many with top marks.

We need more Jaime Escalantes in this country. We cannot regard students who may suffer from disadvantageous circumstances as unworthy of our utmost efforts. We must give them the attention they deserve, and when we do, they will give back as much and more. Likewise, when we recognize and respect the needs of the Hispanic community, we open the door to many more positive contributions to our society, contributions that will enrich each of us individually and all of us as a nation.●

DE PAUL HOSPITAL, MILWAUKEE, WI

● Mr. KASTEN. Mr. President, I rise today to honor the 30th anniversary of the De Paul Hospital in Milwaukee. Since 1958, De Paul has provided quality care for countless men and women suffering from alcoholism and other afflictions.

The De Paul Hospital—under the leadership of Mr. A. Bela Marotti—has been a source of pride to the Milwaukee community. Wisconsinites take care of each other, and De Paul is leading the way by example.

I ask that a brief history of the De Paul facility be included in the RECORD.

The information follows:

DE PAUL REHABILITATION HOSPITAL

Founded by A. Bela Maroti in 1958, De Paul Health Corporation originated as a halfway house for homeless men. Within a year the home was legally incorporated as St. Vincent de Paul Men's Home, Inc.

By 1961, De Paul expanded to meet the medical, psychological, spiritual, social and vocational needs of the men at the "home", many of whom were alcoholics.

In August 1963, De Paul received approval from the Wisconsin State Board of Health for operation of a hospital unit to provide the specialized medical care needed by the acute alcoholic. The following year De Paul was approved for membership by the American Hospital Association as a specialty hospital.

Since then, De Paul has continued to grow and expand to meet the needs of all people living in Milwaukee and throughout the State of Wisconsin. This includes the construction and subsequent additions of our parent hospital facility, five outpatient clin-

ics with additional facilities located in Madison, Hartford, and Manitowoc.

Programs offered by De Paul address all levels of alcoholism, chemical dependency and mental health, and are directed towards men and women of all ages.

A. Bela Maroti, a native of Hungary, accepted a challenge in 1958 to create a home for men with no place to go. Since then Mr. Maroti has been the driving force of De Paul. His compassion for people has made De Paul what it is today. Throughout its history, De Paul has grown and matured under the direction of Mr. Maroti, whose experience has lead him to a better understanding of people.

Under Mr. Maroti's leadership, De Paul has established a national and international reputation for its pioneering work in the field of alcoholism and other drug abuse. Mr. Maroti's noteworthy accomplishments in his distinguished career include president of the National Association of Addiction Treatment Programs (NAATP) from 1979–1981, and founding board member and charter fellow in the American College of Addiction Treatment Administrators (ACATA).

While October, 1988 will signal the retirement of Mr. Maroti as president of De Paul Health Corporation, he will remain active as president of the De Paul Foundation, the fund-raising arm of De Paul Health Corporation.

For thirty years, De Paul has been People—its patients, their families, the community and its employees. Without caring, compassionate employees—De Paul would cease to exist.

De Paul is the oldest, largest, most comprehensive facility of its kind in Wisconsin, and does not take this responsibility lightly. Research and proven developments in the AODA field are incorporated into De Paul's programs to meet the needs of the Wisconsin community.

De Paul accepts all. Individuals from all socio-economic levels, all nationalities and all backgrounds are treated equally, with respect and dignity.

This is the De Paul tradition, started by A. Bela Maroti thirty years ago. It remains as true today as then.●

RHODE ISLAND'S BLACK REGIMENT IN THE BATTLE OF RHODE ISLAND

● Mr. PELL. Mr. President, for far too long the role of black Americans in the history of our Nation has been generally neglected, obscured, and frequently unknown to generations of both white and black Americans.

It is only in recent years that the contributions of black Americans to the formation, growth, and development of our Nation has begun to receive the attention it deserves.

One such instance involves the role of the First Rhode Island Regiment, the black regiment, in the Revolutionary War's Battle of Rhode Island on August, 29, 1778.

The black regiment, made up of both black freemen and slaves who gained free status through their service, repelled three attacks by Hessian and British soldiers at Butt's Hill in Portsmouth, and thus permitted an orderly retreat by the forces of Gen. John Sullivan.

Last month I had the pleasure of attending a commemoration of the 210th anniversary of the Battle of Rhode Island, at which a principal speaker was Prof. E. Yvonne Moss of Portsmouth, a member of the department of political science at Southeastern Massachusetts University. In her incisive address, Professor Moss argued persuasively that the neglect of the role of blacks in our Nation's history is a disservice to all Americans, black and white.

Mr. President, as we continue across the Nation our observances of the events that brought independence to our Nation and led to the development of our constitutional democracy, I think it is well to keep in mind the role placed from the earliest days of our Nation by black Americans, and I ask that the text of Professor Moss' address, "Rhode Island's Black Regiment: Authentic American Heroes" be printed at this point in the RECORD.

The remarks follow:

SPEECH GIVEN BY PROF. E. YVONNE MOSS

RHODE ISLAND'S BLACK REGIMENT: AUTHENTIC AMERICAN HEROES

Tomorrow it will be two-hundred and ten years ago to the day that black soldiers in the First Rhode Island Regiment, the black regiment, distinguished themselves in, the Battle of Rhode Island, on August 29, 1778. British and Hessian soldiers attacked the retreating Americans under Gen. John Sullivan on Butt's Hill. Hessian soldiers charged repeatedly down the hill at the positions held by black soldiers. Three times the German soldiers attacked. Three times the black regiment drove them back. Gen. Sullivan would declare that a large share of the day's honors had to to the black soldiers. (Battle 1932, p. 14) "The courage displayed by these black troops before these veteran soldiers of many a European battlefield," wrote an early twentieth-century historian, "was not surpassed by any regiment during the war." (Battle 1932, p. 13) We are told that the fighting had been so fierce that the day after the battle, the Hessian commander sought to change his command to New York. He feared that his men would shoot him if he led them into battle again because they had suffered such losses at the hands of the first regiment. These are the assessments which were made of the valor of the men who served in Rhode Island's Black Regiment. It is to commemorate and celebrate the service and sacrifices of these soldiers, and indeed of all black Americans who have served in the U.S. military, that I'd like to speak of them as authentic American heroes.

In addressing my topic today, I emphasise the word, American: in order to focus our attention on one of the consequences of our Nation's racial dilemma. There are still those who view Afro-American history as separate, apart, and peripheral to the mainstream of our country's past. On the contrary, Afro-American history is an important part of every American's historical legacy regardless of their race, religion, or national origin. An appreciation of Afro-American history allows us to understand ourselves as Americans, in realistic not in fictional terms. It allows us to develop a national pride based not on a narrowly reconstructed political mythology, but on the basis of real human accomplishment. Our political culture socializes us all to accept as fact, political myths which are comforting, but which are sometimes more illusionary than real. As a people who pride ourselves in our technological and scientific achievements, we are often guilty, politically, of not wanting to be confused by the facts. Afro-American history is imporant for every American because it's study can help to correct many of the delusions and distortions of our past.

I discovered how important Afro-American history was, for All Americans, through my experiences teaching American politics in pre-dominately white colleges and universities. Upon learning about the political experiences of black Americans my students reacted with emotions that ranged from denial, to disgust, and included astonishment and anger. Some were stunned by the Dred Scott decision, in which the Chief Justice of the U.S. Supreme Court opinioned that blacks had no rights that whites were bound to respect. They were often shocked to discover that it's only been 34 years since the Supreme Court declared that black Americans were entitled to the equal protection of the law; it's been a mere 25 years since all Americans were guaranteed the right to vote; and it has only been since the 1940's, with some notable exceptions, like the integrations of the First Rhode Island Regiment after 1780, that the American military had been organized on a desegregated basis. Sometimes student responses take an amusing turn. One student demanded to know who this guy "Jim Crow" was. He sure must have been something, she reasoned, since there were so many books written about him in the library. Having never had a course in Afro-American history, she didn't realize that Jim Crow was not a person, but a system of segregation that has existed in this country for almost a hundred years. A study of Afro-American history allows us then, to know more about ourselves as Americans; it also helps us to confront the continuing challenges of, "The American dilemma."

Writer Ralph Ellison describes the American dilemma as a kind of ethical schizophrenia. As Americans we fervently and sincerely believe in freedom, justice, equality, and the promises of a democratic society. At the same time we are guilty of undemocratic, inhumane, and oftentimes oppressive treatment of selected groups within the population. One of the great tensions in our national life has been that derived from the challenges of resolving this dilemma.

This dilemma of American society can also be found in the life and person of one of our most eloquent statesmen of the revolutionary period, Thomas Jefferson. Jefferson articulated the ideology of the American Revolution in magnificent terms. The man who wrote the Declaration of Independence, including the phrase, "we hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights . . .", was himself, a slaveowner. The man who attacked King George III for promoting the international slave trade, struggled himself with whether to free some of the slaves on his Virginia plantation. To confront Jefferson's "American dilemma" is not to diminish in any way the importance of his achievements. As Judge Higgonbotham points out, the historical irony is that although the authors of the Declaration of Independence did not live the values they articulated, ". . . they created a document

that put moral demands on all Americans who would ever quote it". (1978, p. 384) ". . . Once the drafters and signers of our Declaration made the decision not to weaken their moral argument for nationhood by attempting to rationalize the lie many of them were living, they made inevitable the irony that the truth they espoused, and not their example, would eventually guide their progency to a society more just then their own." (Higgonbotham 1978, p. 389)

Using the historical experiences of African-American people to expand our awareness of American history allows us to understand that as Americans we are neither monsters nor saints. We are imperfect human beings struggling to create a better world often in the face of tremendous opposition. In our struggles we make choices. We can choose to do great good, as we have done many times. We can choose to do great evil, as we have also done. It is those times, when we have chosen to do great good, to live up to the best in ourselves, and our national character, of which we can be most proud. One of those moments is the Battle of Rhode Island in which the men of the black regiment chose to defend the aspirations for freedom of the newly created United States of America. The choice is especially poignant because the new nation was ambivalent about accepting the help of these Afro-American men, whose forebearers had been in the Americas since before the Mayflower.

Historians tell us that Euro-American colonists were divided over the issue of allowing Afro-Americans, whether slave or free, to enlist in the Continental Army. Although the first American to die in the Revolutionary War was a black man, and many blacks volunteered to serve, General George Washington initially opposed the inclusion of black Americans into the Revolutionary Army. A number of factors would persuade Gen. Washington to change his policy-a change which influenced the formation of the first regiment in Rhode Island. These factors included the practical, military and political situation, that existed in 1778.

By the winter of 1777, the Continental Forces and the Rhode Island State Militia found themselves in dire circumstances. There was a shortage of both soldiers and supplies. The British had occupied Newport since December, 1776, and effectively controlled all of Aquidneck Island. In early 1778, Gen. Washington reversed himself on the use of black troops and recommended to Governor Cooke of Rhode Island that he fill the State's military quota with black soldiers.

About two-hundred black men, both slave and free, joined the first regiment during the February to June enlistment period. Rhode Island's General Assembly voted to offer freedom to any bondsman who enlisted in the Continental Army during this time. Slave owners were paid up to one-hundred dollars by the State, for each enslaved person who enlisted. This was three years after the British had offered, in 1775, freedom to any black American who would fight for the British Crown. Thus, the deteriorating conditions of the American war effort in 1777 and 1778, as well as the threat of British success in recruiting black soldiers with offers of freedom, were two factors which influenced the decision to enlist black soldiers in the Rhode Island Regiment.

From the perspective of black patriots, however, whether slave or free, other incentives were decisive. Historian, Gary Puckrein, tells us that the revolutionary ideology, expressed in the Declaration of Independence, drew many black free men into service in the American Army. "The Revolutionary promises of 'life, liberty, and the pursuit of happiness' raised hopes . . . of a new age when race would not bar an individual from the bounties of equality." (Puckrein 1978, p. 19) At the same time, for enslaved persons, the promise of freedom upon enlistment was not simply an abstract or political goal. Freedom literally meant removing the shackles and chains of slavery from their bodies, and they hoped, from their lives. Patriotism and "the freedom spirit" combined to induce 6,500 Afro-Americans to join the Continential Army or Navy in the American Revolution.

The 200 black men of the first regiment truly earned the "red badge of courage." Not only did they repulse the English assault and cover Gen. Sullivan's evacuation in the Battle of Rhode Island; but, they fought and died for rights of citizenship which the newly freed United States were reluctant to extend to them, or to protect for them. These then are authentic American heroes. They were patriots who choose to fight for freedom, even though the political system would fail to protect the rights for which they had fought.

I like to think that the men of the black regiment intuitively understood in 1778 what Jesse Jackson reminded us of in Atlanta in 1988: That which ever ship our forebearers came to these shores on, we are all in the same boat now. Put simply, their stories are our stories, whether we are young or old, male or female, Afro-American, Euro-American, hispanic, or Asian. It is a story of people willing to defend our land and our communities—to struggle and sometimes to die for the things that we hold dear.

The examples of the men who fought here, like those of black soldiers throughout American history, remind us that in a less than perfect world, we are often called upon to confront challenges which require courage, valor and strength. We are asked to give our best under seemingly impossible or unjust circumstances. The black men of the First Rhode Island Regiment chose to serve. Theirs is a legacy that we can all take pride in and derive hope from: hope for creating a better society; hope for resolving our "American dilemma"; hope that we may reflect in our own lives their courage.

My hope is that you are most aware of two things today; first, that the members of the black regiment are not only Afro-American heroes; they are authentic American heroes. Finally, that the study and commemoration of black history is important for all Americans. It helps us to confront the American dilemma while it helps us to better understand ourselves as a nation.

Derrick Bell (1980) dedicated a poem to the courageous black athletes who mounted a protest against racism in the 1968 olympic games. It's sentiment could be applied to the men of the black regiment. Theirs was an:

. . . extraordinary achievement
performed for a nation which had there
been a choice
would have chosen others, and
if given a chance
will accept the achievement
and neglect the achievers.
here, with simple gesture, they
symbolize a people whose patience
with exploitation will expire with
the dignity and certainty
with which it has been endured
too long.

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NATIONAL ENERGY POLICY

● Mr. FORD. Mr. President, in the aftermath of the recent Persian Gulf tragedy, the question of what went wrong persists. How could a mistake like this occur? Was there a failure of military technology? Why couldn't our military's state-of-the-art radar distinguish a commercial carrier from a hostile aircraft? Can similar disasters be prevented?

But the real issue here goes much deeper. The real issue is what went wrong with our memories, why the presence of American ships is necessary in the first place, and, like a little child, how many times must we have our fingers burned before we learn?

American ships are stationed in the Persian Gulf to keep the flow of oil from the region interrupted because, should that happen, Europe and Japan will suffer severely. Our ships are there partly because America does not have a national energy policy and, thus, remains dependent on imported energy and unstable and unreliable sources to help accommodate this country's economy.

Memories of the chaos and hardship that resulted from the 1973 Arab oil embargo have faded. It is a subject very few talk about any more. And the rush to put in place a national energy policy that would assure the United States a greater degree of energy self-sufficiency has slowed to a crawl.

The drive toward a national energy policy has all but been abandoned by this administration and this Congress despite repeated warnings that such a course continues to expose this Nation to the ultimate weakness.

Yet despite national slumber, the Commonwealth of Kentucky has persevered pushing forward with research and development into new energy technologies utilizing resources that will lessen our dependence on foreign energy. Under the direction of Kentucky Energy Secretary George Evans, major progress has taken place in advancing clean coal technologies, which are critical to a national energy policy.

These efforts have continued.

In April 1987, energy, government and business leaders from around the country gathered in Lexington, KY, for Coal Summit II. This meeting, initiated by Secretary Evans, produced not just another warning that rising imports of foreign oil could lead to serious energy security problems by as early as 1995; it recommended immediate action to prevent another crisis.

It produced the foundation for a national energy policy. That format has been distributed widely among political and corporate leaders. But too few respond positively.

How many warnings will it take to shake this country to its senses. As our dependence on imported energy soars, we become increasingly vulnerable to another embargo. When it does happen, will we be in any better position to respond than in 1973? Now more than ever we in Washington need to heed these warnings by accelerating efforts toward greater energy self-sufficiency.

It is too late for any meaningful action in this session of Congress, but it must—I repeat must—be one of the top priorities when the next session of Congress convenes in January. It must be a top priority of the next President.

Continued indifference and inaction will mean that the United States will remain a nation at risk to the ultimate threat of economic paralysis. This is a risk we cannot afford to take.●

VOCATIONAL-TECHNICAL EDUCATION WEEK

● Mr. D'AMATO. Mr. President, I rise today in support of Senate Joint Resolution 363, introduced by my colleague, Senator SARBANES, to designate November 28 through December 2, 1988, as "Vocational-Technical Education Week."

In our increasingly complex and technical society, it is clear that vocational education and job training plays an indispensable role in the full development of our work force, and is essential to the growth and competitiveness of our Nation. Vocational-technical education not only provides students with the basic academic and job-related skills necessary to enter the work force, but prepares workers for the majority of occupations targeted for the largest and fastest growth in the next decade.

Enrollment in vocational-technical educational programs is increasing steadily. There are currently over 15.5 million students nationwide participating in secondary and postsecondary public vocational education programs. The fact that graduates of vocational programs spend more time in the labor market and often earn a higher salary than nonvocational graduates of a similar background further illustrates the importance of vocational programs in our educational system.

Vocational-Technical Education Week will provide necessary recognition to an integral part of our Nation's education system. As a well-planned vocational education program is vital to the future economic development of the Nation and to the well being of its citizens, I am pleased to cosponsor this resolution, and I urge its immediate passage.●

LISA LEARNER: A DISTINGUISHED SENATE STAFFER

● Mr. DIXON. Mr. President, I want to take this opportunity to bid farewell to Lisa Learner as she leaves the staff of the U.S. Senate after serving with distinction for 7½ years.

Lisa joined my staff in 1981, when I was first elected to the Senate. She always had ideas. Most were good—some not quite up my alley, but she was always thinking. Lisa helped me in a number of important legislative initiatives, including:

Amendments for additional funds for the Summer Youth Employment Program;

Funding and authorizing legislation to combat hunger and homelessness in this country;

Creation of the Illinois and Michigan canal national heritage corridor; and

Saving the WIN Program in 1982.

Lisa became expert on technically complicated issues such as the unemployment insurance system, and she was of great assistance to me as we worked to ensure passage of the Federal Supplemental Compensation Program, which provided additional weeks of benefits to unemployed workers during the last recession.

In 1985, when Chrysler Corp. announced plans for a joint venture with Mitsubishi Motors, Lisa coordinated efforts between my office, the Governor's office, and the many Illinois communities that wanted the plant, and in 1986, Diamond-Star Motors was launched in Bloomington, IL.

In the 99th Congress, Lisa assisted me on the Senate democratic working group on trade, tackling the many diverse issues associated with international trade. She was also my liaison with organized labor. She was a staunch and effective advocate for workers everywhere.

Although she left my office in 1987 to join the staff of Senator DON RIEGLE, she kept in touch, never forgetting her Illinois roots.

I wish Lisa well in her new position as manager of legislative affairs for Chrysler Corp. Her father, David Learner, has been a Chrysler dealer in Rock Island for many years, so in a sense, Lisa has always had "Chrysler blue" running in her veins.●

AVAILABILITY OF RAILROAD SERVICE

● Mr. KERRY. Mr. President, I rise to address an issue of great importance to the economic development of the smaller and more remote communities of our Nation. That issue is the availability of railroad service.

During the 1800's, all levels of government, Federal, State, and local, granted numerous incentives to a new technology, railroads, to encourage the development of an integrated transportation system. The result was a national rail system unequalled in the world and critical to our development as a vigorous industrialized world power. All of us are familiar with the ensuing history of the relationship between government and the railroad industry: A history marked at times by partnership, at other times by abuses of power and at still other times by overregulation by the various governmental units of our Nation.

We in the Northeast are keenly aware of the importance of a healthy rail system to our economy. We suffered through the demise of the Penn Central and struggled with Conrail and other more entrepreneurial carriers to develop viable rail service for our region, and we know full well how much of the problem was created by the dead hand of the regulators.

The Staggers Rail Act of 1980 marked an important new chapter in the relationship between government and the railroads. The Staggers Act substituted the discipline of the marketplace for government regulation. Contractual arrangements between railroads and shippers have now replaced tariffs set by the ICC, in most cases. The railroads are now free to respond to the marketplace competition provided by trucks and water carriers—and even by railroads moving commodities produced in other regions of the Nation. The Staggers Act has also made it easier for the railroads to rationalize their systems by abandoning those portion of their system that are uneconomic and sap the economic strength of the overall system.

At the same time, the Congress recognized that not all shippers would have effective transportation alternatives; that sometimes railroads might seek to avoid or prevent competition; and that the public convenience and necessity—the overriding public interest—might sometimes require the railroads to maintain less profitable portions of the rail system. Thus, the Congress provided in the Staggers Act certain safeguards for captive shippers; for shippers who might be victimized by anticompetitive conduct; and for local communities in abandonments cases. The Interstate Commerce Commission was given the responsibility for implementing these safeguards.

Mr. President, the Staggers Act has proven sound in concept. Deregulation has worked well where transportation competition exists, and our Nation's railroads have been rejuvenated. The majority of our Nation's shippers and communities have benefited from the new competition for transportation service and from the improved service offered by our revitalized rail industry. It is fair to say that for these shippers and communities, Congress' expectations for the Staggers Act have been comfortably exceeded.

But, Mr. President, the record of the Interstate Commerce Commission in implementing the safeguards for captive shippers and local communities is appalling. The Commonwealth of Massachusetts has had the occasion to test these safeguards in a recent abandonment proceeding involving one of our communities. The results have been disappointing, to say the least.

One of the threshold determinations of any abandonment proceeding is whether the line to be abandoned is economic and what its economic value is to the overall rail system. These are appropriate inquiries. Yet, in making these inquiries, the ICC does not scrutinize the actual cost of operating the line question—although it does consider the actual revenues generated from the line.

Moreover, in judging the economic viability of the line, the ICC does not consider the widely accepted, classic method of rail asset valuation, the method which was endorsed by the courts for use in the massive Penn Central bankruptcy proceedings. That method is original cost less accumulated depreciation, also known as net investment. Instead, the ICC uses a constantly shifting set of assumptions, which, intentionally or not, produce the highest value possible under arcane economic theories. The result is that revenues which might be viewed as a sufficient return under the classic methods are instead grossly inadequate when measured against the inflated valuation.

I know this tale is a familiar one to many of my colleagues who have been pressing for regulatory reforms at the ICC. It is a tale of regulatory sleight of hand, the use of the smoke and mirrors of defense economic theory far removed from everyday experience to return commonsense protections for shippers and communities into a license for the railroads to do what they please.

To the uninitiated, the burden of overcoming these formidable obstacles is compounded by the series of extremely short deadlines that occur in the early stages of an abandonment proceeding. All too often, by the time the various constituencies for the maintenance of profitable rail service have organized themselves, the train has left the station—indeed, the ICC has hung a "Closed" sign on the station. And another American community experiences the isolation and frustration that comes from being cut off from an efficient source of transportation vital to economic well being.

Mr. President, some would examine the mess at the ICC and conclude that it just goes to show how regulation is no substitute for the efficient forces of the marketplace. I draw a somewhat different conclusion. I yield to no one in my admiration for the efficiencies of the marketplace, but it cannot be questioned that there are circumstances where market forces are distorted by monopoly power, or where market forces must sometimes yield to the greater public interest. Some modest measure of regulation is appropriate and workable.

The Staggers Act represented the high water mark of a decade of intense congressional activity to cope with a national rail system in crisis. It is a sound, thoughtful piece of legislation. There is nothing about the modest measure of regulation that Congress left in place in the act that cannot be effectively carried out by a balance, informed Commission. I do not pretend to know all the reasons why congressional intent has been so thoroughly distorted and frustrated at every turn by the ICC, but I do know this: Whatever the reasons may be, the experience of the Commonwealth of Massachusetts has convinced me that we in Congress no longer have a luxury of doing nothing. We must clean up the mess at the ICC.

Next Tuesday, Mr. President, the Commerce Committee will have its final markup meeting of this Congress. I understand that at that time my colleague Senator ROCKEFELLER will, with several other Senators, offer a compromise version of the ICC reform legislation he has sponsored. At my request, that compromise contains provisions that will put a halt to some of the ICC's most outrageous and least defensible actions in the abandonment area. It also contains provisions that will give shippers and communities threatened with the imminent loss of rail service a little more time to come to grips with the complexities of the ICC's procedures. I will support this compromise and I urge my Commerce Committee colleagues to join me.●

CECELIA TARAVELLA

● Mr. McCONNELL. Mr. President, every now and then I run across an article in one of my State's local newspapers that tells an extraordinary tale of accomplishment. I found such a story in Wednesday's Kentucky Post that details how a constituent of mine, Cecelia Taravella, worked hard to overcome difficult odds. I would like to insert that article into the RECORD.

Following her divorce at the age of 55, Mrs. Taravella began looking for a job to support her sons. Because she was short on experience, finding a job was not easy. Mrs. Taravella turned to the senior community service employment project for job training and soon landed a job with Landen Formal Wear as a seamstress. She has been at Landen for 6 months and recently was named the project's employee of the year for northern Kentucky. This week, she received the first "Donald Reilly Older Worker of the Year Award" from the National Council on the Aging.

It is no accident that Mrs. Taravella was selected for this honor. She earned the distinction through hard work and dedication—to her job and her family. Mr. President, I am inserting this article into the RECORD because I believe her outstanding achievement should serve as an inspiration to all of us.

The article follows:

BELLEVUE DIVORCEE WINS NATIONAL AWARD

(By Peggy Kreimer)

A little more than a year ago, Cecelia Taravella felt frightened and frustrated.

She was recently divorced, 55 years old and short on work experience and job prospects.

Tuesday, the Bellevue mother of three boarded a plane for Washington, D.C., to accept the first Donald Reilly Older Worker of the Year Award from the National Council on the Aging.

In between, she turned her life around through the Senior Community Service Employment Project, under the direction of the Northern Kentucky Community Action Commission.

Mrs. Taravella heard about the training program for older people and applied in summer 1987. She was living in Alexandria, caring for her teen-age sons with a dwindling nest egg from the sale of the family house.

"Everywhere I went for a job, I needed experience," Mrs. Taravella said. "Where I didn't need experience, I didn't have a way to get there. I didn't think I would ever find a job."

When she first came to the Senior Community Service Employment Project, she wouldn't talk, said director Syd Terrell.

"She just didn't have the confidence. You could see the fear."

Mrs. Taravella went through training ranging from answering phones and filing to business etiquette and money management. The project also provided on-the-job training at social service agencies—Mrs. Taravella worked 20 hours a week at the Salvation Army in Newport.

She moved in with her sister in Bellevue during the week so she could catch a bus to work. She returned to Alexandria on weekends to care for her sons.

The employment project is designed to prepare older workers for full-time employment in businesses. When the owner of Landen Formal Wear Rentals contacted the Employment Project looking for an older woman to train as a seamstress, Mrs. Taravella decided to give it a try.

She has been there more than six months. She is learning the business from sewing and pressing to measuring and ringing up

sales. She moved her family to a new apartment in Bellevue and knows the bus schedule by heart.

Mrs. Taravella was honored last month as employee of the year for the Senior Community Service Employment Project in Northern Kentucky. The win placed her name in nomination for the national award with workers from more than 60 employment projects across the country.

The National Council on the Aging has been funding the program for 20 years and initiated the award this year. The first award, to be presented tonight, also will be the first vacation for Mrs. Taravella.

"I've never been out sight-seeing," she said. "I don't even know what it is. I guess I'll find out."●

NATIONAL POW/MIA RECOGNITION DAY

● Mr. LEVIN. Mr. President, National POW/MIA Recognition Day helps us to honor and remember those who made tremendous sacrifices to defend our country, and especially those who have not returned from war. I am pleased to be a cosponsor of the legislation that recognizes this day and these sacrifices.

Our country cannot rest until we have a full accounting of all POW's and MIA's. Those of us who do not have a loved one missing in action in Southeast Asia cannot fully understand the pain and frustration felt by those who do. The pain of loss is worsened by the pain of not knowing.

This frustration is accentuated by the unwillingness of the Vietnamese Government to cooperate with our Government in determining what has happened to our missing soldiers. As a result of a visit I took to Southeast Asia in 1980, I have recognized the difficulty of getting the Vietnamese Government to cooperate even on such a basic, humanitarian issue. I was not surprised therefore when this past July the Vietnamese Government, after pledging cooperation in joint United States-Vietnamese investigations of certain MIA cases, backed away only a few weeks later. This ended, temporarily we hope, a long period of gradually improving cooperation from that government in the effort to account for American POW's and MIA's.

But this day is also to honor those POW's who have returned, to recognize the sacrifices that they made, and to pledge our continued support for them. Congress has increased the fiscal year 1989 budget for the Veterans' Administration by over $1.1 billion, including a $447-million increase for VA medical care. This represents a $224 million increase over the administration's request, and will hopefully make it possible to continue providing the high level of medical care to which veterans are entitled.

We are not just obligated to restore the physical health of our returned POW's. The problem of posttraumatic stress disorder [PTSD] has only recently begun to gain recognition. At my urging, the VA Great Lakes Medical Region has instituted training seminars and workshops for psychiatrists and other personnel involved in the diagnosis and treatment of PTSD, so we can eliminate the discriminatory way in which our veterans with PTSD are treated from VA region to VA region. Congress has also appropriated $5 million in new funds for the treatment of PTSD.

I am also happy that the VA Medical Center in Ann Arbor has been selected as a site for a new VA Geriatric Research, Education, and Clinical Center. Centers such as this will play an increasingly important role in addressing their needs as our veterans grow older. The research and education conducted at this center should beneit all of Michigan's veterans and could benefit all senior citizens.

America has not forgotten and must not forget those who have made sacrifices for our country which we cannot repay. We should honor and remember those who selflessly lost years in POW camps and those missing who have not returned. We remember through our words, through our hearts, and through our actions.

Today, America remembers.●

U.S.-JAPAN NUCLEAR COOPERATION AGREEMENT

● Mr. GLENN. Mr. President, the Senate voted late last March to permit a new United States Nuclear Cooperation Agreement with Japan to come into force. As one of the 30 Senators who voted against that agreement, I think that it is appropriate for me to bring my colleagues up to date about a new twist that may soon be in store concerning the implementation of that agreement.

This is an agreement, let us recall, that the Foreign Relations Committee, the House Foreign Affairs Committee, the U.S. General Accounting Office, the Nuclear Regulatory Commission, the last Secretary of Defense and two of his key Assistant Secretaries all characterized as contrary to our Nation's commitment to halting nuclear terrorism and proliferation. The GAO said the agreement was illegal.

Some Senators will remember that one of the many arguments against that agreement focused on its scheme to airlift tons of United States-controlled plutonium—a nuclear weapon material—from reprocessing plants in Europe, over the North Pole, through United States and/or Canadian airspace, to undetermined airports in Japan.

Well, the citizens and representatives of Alaska and the State of Washington did not think too highly of this idea, to put it mildly. They gave press conferences, wrote letters, issued petitions, and finally succeeded in getting this administration to promise that it would not agree to air shipments of plutonium through U.S. airspace except in cases of emergency landings—although the administration has ominously refused to permit this promise to be solidified in law. And thanks to the work of my distinguished colleague from Alaska, Senator MURKOWSKI, the casks to be used in transporting this plutonium must be certified to withstand a worst-case air crash.

Although this 30-year agreement is only months old, the administration now appears poised to send the 100th Congress, probably in the next few days, an amendment of these guidelines to allow Japan to receive this material from Europe by means of surface ship. Evidently, the original agreement was not quite as perfect as its proponents had claimed. Mr. President, I will ask to have printed in the RECORD several press accounts of this new plan.

I am concerned about what the administration may have in mind with this proposal, especially in light of a report I received last March from the Defense Department and the Joint Chiefs evaluating various possible ways of transporting ton quantities of plutonium from Europe to Japan. The report concluded that "Surface transportation would have an adverse impact on U.S. military readiness," and that "* * * air shipment via the polar route is preferable to sea shipment."

So that my colleagues and the concerned public can better understand some of the risks stemming from sea shipments of this material, I will ask to submit the full text of the JCS report into the RECORD at the end of my brief statement today.

This report—plus the lack of any serious environmental or nonproliferation analysis of the sea shipment option in the documentation that the administration provided Congress during the debate over the Japan agreement—places a heavy burden of proof on the administration to justify any revision of this controversial agreement, especially any changes in the procedures governing the global shipment of tons of this most deadly material, plutonium.

Regardless of whether or not the administration finally does submit this new proposal—and I cannot understand why the next President and Congress cannot reach their own judgments about it given this late date in our legislative year—I believe that all of us should stay up to date on how this agreement is being implemented. Plutonium transportation raises profound risks to our national security

and environment that none of us can afford to ignore.

I ask that the various materials to which I referred be printed in the RECORD.

The material follows:

NEGOTIATIONS ON IMPORTING PLUTONIUM BY SEA

Japan and the United States are negotiating an agreement that would give Japan blanket permission to bring plutonium by sea from Britain and France, a Science and Technology Agency official said Friday.

The official indicated that a program to develop a crash-proof cask to transport the plutonium by air, as permitted under an agreement signed with the U.S. in June, has run into a snag.

Speaking on condition of anonymity, the official said Japan is seeking to broaden its options for transporting the plutonium—for use in its nuclear power plants—recovered in European facilities from Japanese spent nuclear fuel.

He said the sea shipments were being considered in addition to air transport partly because a program to develop a special crash-proof cask for air shipments was behind schedule, and proving to be more costly than expected.

Under the bilateral nuclear energy agreement with the United States, Japan is allowed to make air shipments of plutonium recovered from U.S.-supplied nuclear fuel without prior permission for the next 30 years as long as certain guidelines are maintained.

Sea shipments require approval prior to each voyage, according to the agreement.

The United States and Japan agreed to promote air transport following the first shipment of plutonium from France to Japan in 1984, which took 5 weeks and involved a massive U.S. military escort to protect the cargo from possible terrorist attacks.

The official said the first shipments under the new agreement could be made in 1992 at the earliest. Negotiations on guidelines for sea shipments got under way in June, he said.

The sea transport plan would include an escort by Maritime Safety Agency Patrol ships, he added. According to Japan's Constitution the government may not dispatch Self-Defense Forces overseas, but use of vessels under the jurisdiction of the Maritime Safety Agency are not expected to pose a legal problem.

Calculations by the U.S. Nuclear Control Institute show that a jumbo jet carrying about 230 kilograms of plutonium would have to fly to Japan every 2 weeks by the early 1990s to move the estimated 45 metric tons of plutonium expected to be returned to Japan by the year 2000.

The Science and Technology Agency said it plans to recover 25 to 30 tons of plutonium by the end of the century.

Casks currently approved by the United States Government can hold only 2 kilograms of plutonium, according to the private research group for stopping the proliferation of nuclear weapons.

The group said that a new cask under development would weigh 5,000 pounds and be capable of holding 6 to 7 kilograms of plutonium.

ADMINISTRATION, JAPANESE FACE DEADLINE FOR WINNING OKAY FOR PU SEA SHIPMENTS

The Reagan administration may not have enough time to send to Congress a subsequent arrangement granting long-term approval for sea shipments of plutonium from Europe to Japan. Administration officials are targeting September 15 as the last day they can forward the arrangement to Capitol Hill and be sure that it would lie before Congress for the 15 legislative days called for in the Atomic Energy Act. Congress could adjourn for the year as early as September 30, although some date in early October is considered more likely. "It is fifty-fifty whether we will make it in time," said one U.S. official. Administration officials and the Japanese would like to get programmatic approval for sea shipments this year while President Reagan is still in office.

But before a subsequent arrangement can be sent, U.S. and Japanese negotiators must arrive at satisfactory language for modifying the Pu shipment provisions of Annex 5 of the U.S.-Japan agreement for nuclear cooperation. A round of talks in Tokyo in early August produced no final language. Said to be a sticking point is the U.S. insistence that any ship carrying Pu be escorted by another armed vessel. "We don't want to be in a position of having to retake" the ship carrying Pu if it were captured by terrorists, said a U.S. government official.

JAPAN SEEKS UNITED STATES OKAY TO SHIP PU BY SEA

Japan has asked the U.S. government to authorize sea shipments of plutonium for the 30-year life of the U.S.-Japan nuclear cooperation agreement, which entered into force July 17. The request, say U.S. officials, comes in recognition, here and in Japan, that it may not be possible to design, build, and test an air transport cask by the early 1990s when the next shipment of plutonium from Europe to Japan is expected to occur.

Officials of the U.S. State Department, NRC, and other agencies are meeting to discuss what conditions to attach to programmatic approval of sea shipments, to which the Reagan administration has agreed in principle. But congressional opposition to the plan surfaced quickly. In an August 4 letter to President Reagan, 19 congressmen led by Rep. Howard Wolpe (D-Mich.) and Sen. William Proxmire (D-Wis.) emphasized that they had opposed sea transport of Pu four years ago.

In an August 1984 letter, they wrote, "we warned that '(sea) shipments of nuclear explosive materials would provide tempting targets for attack by terrorists or even certain countries seeking to quickly acquire significant quantities of nuclear weapons materials.' With regard to Japan's first and only sea shipment of plutonium from Europe, pending at that time, we stated: '(T)he U.S. should avoid sea transportation of this plutonium and of all nuclear explosives material generally in favor of air transportation.' "

The congressmen acknowledged that there has also been serious criticism of Pu air transport because "a crash-proof plutonium shipping cask suitable for large-scale commercial air transport has still not been developed and, according to some experts, may never be." But, they added, "continuing congressional concern over the safety of air shipping plutonium should not overshadow our grave concerns over transporting this material by sea."

Both the U.S. and the Japanese agree that any air shipment of Pu must use a polar route or some other route that avoids areas of natural disaster or civil disorder and that the plane cannot land in the U.S. except in the case of an emergency. But even if the flight plan provides only for emergency U.S. landings, the cask used must be certified by NRC.

Under a law passed last year, NRC's certification process must include either actual crashing of a cargo aircraft or other tests that exceed the stresses from a worst-case aviation accident. In a July 27 letter to Sen. Frank Murkowski (R-Alaska), NRC Chairman Lando Zech said that only after such a worst-case accident is defined will NRC work "with appropriate laboratories to determine possible design and testing criteria to meet the statutory requirements for certification."

Although Japan's Power Reactor & Nuclear Fuel Development Corp. (PNC) and its French and American collaborators have been working on an 8- to 12-kilogram cask to meet the criteria specified in NRC's Nureg-0360, the toughest air Pu cask standards in the world, PNC could now have to adapt its ongoing research to as-yet-undetermined NRC requirements for plutonium air shipments.

The Japanese have moved with unusual haste to get the U.S. State Department behind it on the sea shipment approval, sources say, because a "subsequent arrangement" under section 131 of the Atomic Energy Act must be "on the table" for 15 legislative days and time is running out for the current administration. (After 15 days, the arrangement automatically takes effect unless Congress modifies or disapproves it.) From the Japanese point of view, the next U.S. administration may not be as predictable on subsequent arrangements as this one.

It was because of the extraordinary security measures involved in the 1984 shipment of Pu by sea to Japan—measures that included U.S. naval escort for the Japanese ship—that the U.S. insisted on air as the mode for all future Pu shipments. In a March 1988 report, the U.S. Department of Defense said sea shipments should be approved "only if air alternatives are not available." Defense dislikes the cost of the escorts, and satellite-based communications cannot be guaranteed at all times in a sea voyage.—*Eric Lindeman and Michael Knapik, Washington.*

UNITED STATES MAY OK SHIPPING PLUTONIUM BY SEA—JAPAN WOULD GET WEAPONS-GRADE MATERIAL; LAWMAKERS OPPOSED

(By Melissa Healy)

WASHINGTON.—In a shift that has already stirred controversy in Congress, the Reagan Administration is moving to approve regular shipments of U.S.-supplied, weapons-grade plutonium by cargo vessel between Western Europe and Japan by expanding an agreement between Washington and Tokyo that took effect last month.

The Defense Department has blocked such arrangements in the past, arguing that the trips would make the nuclear material more vulnerable to terrorist attack and tie up U.S. warships in escorting the cargo.

In a letter to the President, 19 lawmakers warned that such a change in the U.S.-Japan agreement would face strong congressional opposition.

HIGHLY PREMATURE

"It is highly premature to be discussing individual sea shipments of plutonium, let alone a long-term advance approval to Japan for sea shipment of this bomb-usable material," the lawmakers wrote in an Aug. 4 letter to the White House.

Expanding the nuclear agreement has been a top priority for the Japanese govern-

ment, which considers the plutonium shipments an important issue in relations between the two countries. Japan obtains plutonium from the United States for its civilian nuclear reactors but must have it reprocessed in Britain and France before it is usable.

According to the agreement covering the procurement of the material, Japan is required to transport the plutonium by air, flying over polar routes and using special rupture-proof caskets that would limit the exposure in the event of a crash. Those provisions were attacked by Congress because of the radioactive substance's highly carcinogenic effects.

CRASH-PROOF CONTAINER

However, in late July, Japan asked the United States to expand the agreement to cover ship transports after its efforts to develop a large crash-proof casket for the plutonium stalled.

The Administration, seeking to accommodate Japan on the sensitive issue, is moving toward endorsing the new transit method.

Administration officials have told Congress they are considering revising the treaty and may provide the required congressional notification soon. Once the formal notification is made, Congress has 15 days to block it or it becomes official.

Congressional critics concerned about possible safety implications are bolstered by an internal Pentagon report that contends that plutonium-bearing ships would be "accessible and vulnerable" to terrorists during their trips particularly when they passed through channels, straits and other restricted waterways.

UNSTABLE REGIONS

The shortest routes between European reprocessing centers and Japan would take the ships through the Panama Canal, the Suez Canal or the Strait of Malacca, waterways in regions that have experienced violence or instability in recent years.

"Even if the most careful precautions are observed, no one could guarantee the safety of the cargo from a security incident, such as an attack on the vessel by small, fast craft," said the report, produced in March.

Only one Japanese shipment of plutonium has been approved by the United States, in 1984, and on that six-week journey the vessel received escorts from American, French and Japanese warships.

"The logistical problems were significant, and there was an adverse impact on military readiness to ensure adequate security protection," the Pentagon report said.

In the current negotiations, the Pentagon wants to attach conditions that would require U.S. approval of the security arrangements of each shipment, or Japanese certification of having met conditions negotiated in advance.

The lawmakers said they would insist at a minimum that any shipment be escorted by a warship and that the United States not pay for the service. The Pentagon estimated the cost of an escort mission at $2.8 million.

[From NuclearFuel, Aug. 8, 1988]

NEXT EUROPE-JAPAN PLUTONIUM SHIPMENT COULD BE BY SEA, NOT AIR TRANSPORT

The next shipment of plutonium from Europe to Japan—expected to occur in the early 1990s—might be by sea, with a French or British military escort, a number of knowledgeable U.S. government sources now suggest.

At press time, however, NuclearFuel learned that a letter signed by 15 members of the House and five members of the Senate was being sent to the Reagan administration opposing sea shipments of plutonium between Japan and Europe. No further details were available.

The new U.S.-Japan agreement for nuclear cooperation, which entered into force July 17, requires the return of all U.S.-controlled Pu to Japan by air shipment. But a growing number of sources believe that air shipments will not occur unless Japan can avoid NRC certification of a new and larger Pu air cask by using a route that is not near any U.S. air space. Both the U.S. and Japan agree that any air shipment must use a polar route or some other route that avoids areas of natural disaster or civil disorder, and that the plane can't land in the U.S. except in the case of an emergency.

But even if the flight plan only provides for an emergency landing in the U.S., the type of cask used in the shipment must be certified by NRC.

NRC Chairman Lando Zech recently clarified an earlier agency position according to which NRC said it did not have "licensing authority" (approval over the type of cask used) if a shipment did not involve planned entry into U.S. airspace (NF, 16 May, 11). "Unplanned entry into U.S. airspace in the event of an emergency would not alter NRC licensing authority," NRC said in late May in a letter to Sen. Frank Murkowski (R-Alaska).

On July 27, however, Zech told Murkowski that NRC would, indeed, have licensing authority if the Japanese filed a flight plan that included flying through U.S. airspace in an emergency. Zech's letter headed off a threatened attempt by Murkowski to clarify NRC's authority by attaching an amendment to a pending appropriations bill.

But sources in the U.S. maintain it will be impossible to design, build, and test a cask by the early 1990s to meet new NRC requirements, which have not yet been developed.

Under legislation passed last year—the so-called Murkowski amendment—NRC's new certification process must include either actual crashing of a cargo aircraft or other tests that exceed the stresses from a worst-case aircraft crash. In his letter, Zech said that preliminary discussions are underway with the Japanese to define worst-case type aviation accidents. He indicated, however, that only after such a worst-case aircraft crash is defined will NRC work "with appropriate laboratories to determine possible design and testing criteria to meet the statutory requirements for certification."

Japan's Power Reactor & Nuclear Fuel Development Corp. (PNC), and its French and American collaborators, have been developing an 8- to 12-kilogram capacity cask to meet the criteria specified in NRC's Nureg-0360, the toughest air Pu cask standards in the world (NF, 8 Feb., 5).

Now, however, PNC may have to adapt its ongoing research program to unknown new criteria, which, some in NRC believe, will require testing a cask to stresses that are two or three times greater than the stresses produced in tests under Nureg-0360.

Some in NRC also find it ironic that new Pu air cask criteria are only needed for shipments of U.S.-controlled Pu by a foreign nation to a foreign nation through U.S. airspace. In a Federal Register notice of June 8, NRC said that Nureg-0360 requirements would apply to casks used in shipments of Pu into, out of, or through the U.S. by NRC-licensed companies.

Since Japan may have difficulty shipping Pu by air, the U.S. State Department is pushing, according to sources, to authorize sea shipments of Pu for the 30-year life of the cooperation agreement. Japan, according to a State Department official, "has asked the U.S. to consider programmatic approval of sea shipments. We have that request under advisement." He said that State and other U.S. agencies, including NRC, are meeting to discuss what conditions to attach to an approval of programmatic sea shipments.

It was because of the extraordinary security measures involved in the 1984 shipment of Pu by sea to Japan—measures that included involvement of the U.S. Navy as an escort for the Japanese ship (the Seishin Maru)—that the U.S. insisted on air as the means for all future Pu shipments (NF 22 Oct. '84, 10).

In a report prepared earlier this year, the Department of Defense said sea shipments of Pu should be pursued "only if air alternatives are not available." DOD said it believes that to adequately deter theft or sabotage of a Pu sea shipment, "it would be necessary to provide a dedicated surface combatant to escort the vessel throughout the trip." Using U.S. ships "would have an adverse impact on U.S. military readiness," DOD said.

An alternative that has certain advantages, DOD said, would be for the French navy, the British navy, or the Japanese Maritime Safety Agency to provide such an escort. Using a British or French frigate, however, would detract from the French or British regional commitment in Europe and perhaps require the U.S. to assume a greater naval responsibility there for the six to 10 weeks required for a Pu shipment from Europe to Japan.

Meanwhile, Sen. Alan Cranston (D-Calif.) said he is "suspending plans" to try to pass legislation that would attach conditions to implementation of the U.S.-Japan agreement. In a July 28 statement, Cranston said he is reasonably pleased with the implementation conditions for the agreement outlined in a State Department letter to Congress in late May (NF, 13 June, 1). Cranston said it is his and his Foreign Affairs Committee colleagues' understanding that the State Department's response "represents a U.S. government oglibation to carry out the policies specified in this letter for the full 30-year term of the agreement."—Michael Knapik, Washington

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MOVING PLUTONIUM BY SEA IS ASSAILED

(By John H. Cushman, Jr.)

WASHINGTON, Aug. 5—Several members of the House and the Senate wrote to President Reagan today to oppose amending a recently signed treaty that allows plutonium shipments from Europe to Japan. The treaty allows shipments by air, and the changes would permit transportation by sea.

The letter, signed by 15 members of the House and 4 senators, cites "grave concerns" about the risk of a shipment being hijacked during the long voyage, and quotes a recent Pentagon study contending that providing a military escort would be costly and would divert the Navy from other jobs.

Japan and the United States are negotiating changes in a recent agreement between the two countries that permits the plutonium to be shipped only by air. Any change must be reviewed by Congress. Senator William Proxmire, Democrat of Wisconsin, and Representative Howard Wolpe, Democrat of Michigan, are among the lawmakers who oppose the change.

The lawmakers said ocean shipments would be susceptible to attack by terrorists who might try to seize the plutonium, which is suitable for use in nuclear weapons. The plutonium, which has been purified in Europe from wastes generated at Japanese nuclear power plants, is controlled by the United States because the nuclear fuel originated in the United States.

A PENTAGON STUDY

The lawmakers cited a Pentagon study that found in March that shipping plutonium by air was preferable—although that method requires developing crash-proof casks—because of the expense and risk in guarding a ship carrying the fuel. While some lawmakers also have opposed air shipment, they failed earlier this year to block the treaty permitting air shipment under tight safety provisions, including the development of crash-proof containers.

The Pentagon study cited "several basic problems with any sea shipment." Among them were security at ports, the long time needed for a shipment, the dangers of passage through the Panama Canal or Suez Canal, the relative ease of attacking a ship, and the cost of providing naval escorts, estimated at $2.8 million per voyage.

On the only previous occasion when reprocessed plutonium was shipped by sea from Europe to Japan, in 1984, a naval escort was provided by the United States for most of the voyage.

The Japanese press has reported that the two nations plan to amend the new treaty on plutonium shipments to permit sea voyages, and Japanese officials in Washington have confirmed the plan.

[From Anchorage (AK) Times, July 27, 1988]

PLUTONIUM TALKS REVIVED—JAPAN TAKES NEW TACK, HOPES TO SHIP NUCLEAR CARGO BY SEA

(By Bob Ortega)

Talks are under way to modify a new U.S.-Japan agreement that allows plutonium flights near Alaska, a Japanese government official has confirmed.

Japan now wants U.S. permission to ship plutonium by sea, as well.

A Japanese delegation met last week in Washington, D.C., with U.S. State Department officials, for "preliminary talks" on implementing a nuclear cooperation agreement that took effect 10 days ago.

That agreement gives blanket permission for Japan to ship plutonium from Europe to Japan on non-stop polar flights as frequently as twice a month for 30 years, starting in the early 1990s. The flights would be allowed to enter U.S. airspace and land in Alaska in the event of an emergency.

Those flights have faced strong public criticism because of the potential danger of widespread radioactive contamination if there ever were an air accident. Plutonium, which has a half-life of more than 24,000 years, is considered one of the most toxic substances on earth; a microscopic amount can cause death if inhaled or ingested.

In last week's discussions, Japanese officials said they're interested in amending the agreement to allow plutonium shipments by sea, according to Toichi Sakata, first secretary of the Japanese Embassy in Washington, D.C.

The U.S. administration made it clear as a matter of policy that they were ready to discuss that possibility with Japan," Sakata said.

According to Japan's Kyodo News Service, the "working level" talks last week included discussion of possible sea routes.

For years, Japan has sent spent fuel from its nuclear power plants to England and France, where it has been reprocessed into plutonium in breeder reactors to produce electricity.

Several years ago, a single return shipment of plutonium was made by sea, heavily escorted by U.S. warships.

At the time, more than a dozen members of Congress opposed the sea shipment, citing concern over security. It is not clear whether Congress now would approve sea shipments as a regular option.

While far larger quantities of plutonium could be shipped at one time, the trip would take up to six weeks and potentially expose the ship carrying the plutonium to terrorist attack or hijacking, according to Alan Kuperman, issues director for the Nuclear Control Institute.

"I think this is outrageous," said Michigan Rep. Howard Wolpe Wednesday. "I think it would be irresponsible to respond to the Reagan administration's impatience over an adequate cask for air shipment by putting large quantites of the most dangerous substance known to man in a transportation mode that's subject to terrorist attacks or military action."

Wolpe, a member of the House Foreign Affairs Committee, said he flatly opposes sea shipments.

As little as 15 pounds of plutonium can be fashioned into an atomic bomb. Under the pact, Japan can ship at least 153 tons of weapons-grade plutonium over the next 30 years.

Shipments by sea would have to be approved both by Congress and by the Japanese Diet, according to government officials.

The United States has authority over the plutonium, because almost all of it has been produced through the use of U.S. supplied uranium fuel. Under a previous agreement, the U.S. Government considered reprocessing and shipping requests on a case-by-case basis.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, March 7, 1988.

Hon. JOHN GLENN,
U.S. Senate,
Washington, DC.

DEAR SENATOR: Enclosed is your copy of the Department of Defense's technical evaluation of alternate routes of transporting large quantities of plutonium from France or the United Kingdom, where it was reprocessed, to Japan. The Office of the Secretary of Defense, Joint Staff and Services have concluded that air shipment via the polar route is preferable to sea shipment in accomplishing this mission. This report is not intended as a final transportation plan which will be worked out in detail between the U.S. and Japanese Governments.

Sincerely,

KARL D. JACKSON,
Deputy Assistant Secretary of Defense (East Asia and Pacific Affairs).

TRANSPORTATION ALTERNATIVES FOR THE SECURE TRANSFER OF PLUTONIUM FROM EUROPE TO JAPAN

EXECUTIVE SUMMARY

1. Introduction. This study is a technical evaluation of alternate modes of transporting large quantities of plutonium from France and the United Kingdom to Japan. Ensuring the security of separated plutonium in transit is of fundamental importance. Although primarily a Japanese concern, U.S. law requires that the Department of Defense be fully consulted to ensure that physical security measures are adequate. Two basic transportation modalities are available to transfer plutonium from Europe to Japan—by air and by sea. The Office of the Secretary of Defense, Joint Staff, and Services have concluded that air shipment via the polar route is preferable to sea shipment in accomplishing this mission. With appropriate security measures, sea shipment can also provide adequate security, although at a higher cost to military readiness.

2. Air Shipment. The first, preferred modality is air shipment. Alternatives for shipment of plutonium by air include: (a) the near-term feasibility of non-stop flights of civilian cargo aircraft; (b) civilian cargo aircraft refueling on the ground; (c) military cargo aircraft refueling on the ground; and (d) military cargo aircraft refueling in the air. Below is a table summarizing the relative strengths and weaknesses of each alternative. (Grades range from the most favorable rating of A to the least favorable rating of E).

AIR TRANSPORTATION ALTERNATIVES

	I. Civilian air nonstop	II. Civilian air ground refuel	III. Military air ground refuel	IV. Military air air refuel
Threat assessment	A	A	A	A
Adequacy of security	A	A	A	A
Impact on U.S. military readiness	A	A	C	D
Time in transit	A	A	A	A
Costs per shipment	B	B	B	C
Frequency of shipments	C	C	C	C

Note.—A = best; E = worst.

3. Sea Shipment. The second modality is sea shipment. Alternatives for shipment of plutonium by sea include: (a) civilian cargo vessel without escort; (b) civilian cargo vessel with US Government escort; (c) civilian cargo vessel with foreign escort; and (d) military cargo vessel without escort. Below is a table summarizing the relative strengths and weaknesses of each alternative. (Grades range from the most favorable rating of A to the least favorable rating of E.)

SEA TRANSPORTATION ALTERNATIVES

	V. Civilian sea w/ o escort	VI. Civilian sea U.S. escort	VII. Civilian sea foreign escort	VIII. Military sea w/ o escort
Threat assessment	A	B	B	B
Adequacy of security	D	B	B	C
Impact on U.S. military readiness	B	[1] D	B	D
Time in transit	E	E	E	D
Costs per shipment	B	D	D	C
Frequency of shipments	A	A	A	A

[1] Upgraded to B if U.S. Coast Guard escort is used.

Note.—A = best; E = worst.

4. Discussion. The Department of Defense has evaluated each of these transportation alternatives and concluded that Alternatives I and II under the air transport modality are preferable. The following pages discuss both the air and sea modalities and four alternatives under each. Since several of the options would have a significant impact on military readiness, the Joint Staff and the Services have indicated further study may be required. Moreover, this is not a final

transportation plan. The United States and Japan will develop a detailed transportation plan prior to each shipment.

AIR TRANSPORTATION ALTERNATIVES

1. Introduction.—Annex 5 of the pending agreement anticipates that the plutonium will be transported from Europe to Japan "by dedicated cargo aircraft * * * via the polar route or other route selected to avoid areas of natural disaster or civil disorder." The Department of Defense believes that air transport is the preferable transportation modality, and that Alternatives I and II are preferable to all other alternatives. This discussion will focus first on concerns common to all of the air alternatives and then turn to the specifics of each.

2. Possible Routes.—There are several possible air routes. The best polar route (approx. 6600 nautical miles (NM)) is almost entirely over water, and it avoids overflying the United States. It extends directly north from France or Britain across the Norwegian Sea, off the east coast of Greenland, across the North Pole, continuing through the Bering Strait, and then turning south-southwest off the east coast of the USSR to Japan. Air France and Japan Air Lines now have direct flights from Paris to Tokyo which largely follow this route, diverting a bit to the east to refuel in Anchorage, Alaska. The shortest route (approx. 5600 NM) describes a great circle across Scandinavia, continuing across Soviet arctic territory, and on to Japan. A final polar option, although considerably longer (approx. 8300 NM), crosses Greenland and then the island archipelago of northern Canada, stops to refuel at one of the military facilities in Alaska, and continues on to Japan. The only advantage of this route is that the plane would remain on ground radar for much of the way. Either route would require the consent of all the states to be overflown; the Soviet route would force reliance on Soviet cooperation to ensure security.

3. Threat Assessment.—Military, transportation, intelligence, and counter-terrorism experts consider air transport the preferred option from a security perspective. These experts consider airports, especially military airfields, to be the most secure transfer points available. Under the agreement, the planes will take off from and land at the most secure airfields possible. The primary threat to a cargo plane is sabotage. One possible scenario would be an attempt to down the aircraft during takeoff or landing with man-portable anti-aircraft weapons. Once the plane has gained sufficient altitude after takeoff until it approaches landing it would be invulnerable to such missiles. Another threat is that a terrorist might seek to plant an explosive device on the plane. If the security measures listed in the agreement are followed, this could not succeed. The only way an outside agent could actually acquire the plutonium cargo would be to hijack the plane, either through force or with inside assistance. Again, appropriate security measures could avert either threat. Following a polar route would further reduce the chance a hijacking or diversion attempt could succeed. Only a small number of states have the ability to intercept and threaten an aircraft in flight; very few could do it over the arctic regions. The primary disadvantages are the relatively limited payload and the greater number of flights which would be required in comparison to sea shipment.

4. Adequacy of Physicial Security Protection.—The primary reasons air transport is the most secure transportation made are that the materials are in transport only a short time and offer few opportunities for interdiction. Thus, many experts believe future long-distance shipments of plutonium will be only by air on specially chartered aircraft with private or military guards and following strict security guidelines. The agreement itself provides a comprehensive list of security guidelines. To ensure the security of air shipment, the various steps listed in Annex 5 are essential. These include: (a) keeping the time and route of the shipment secret; (b) providing armed escorts; (c) ensuring the reliability of the crew and security personnel; (d) loading and offloading the cargo at secure airfields; (e) ensuring the crashworthiness of shipment casks and equipping them with individual transponders; (f) equipping the aircraft with reliable and redundant communications equipment; and (g) developing detailed contingency plans to assure adequate and coordinated responses in any emergency, including identifying adequate military response forces. Several US military airfields along the polar route would be available in case of an emergency.

5. Costs and How They Should be Allocated.—The Japanese would bear the direct costs of equipping, manning, and operating the cargo aircraft, whether civilian or military. Costs associated with a routine Commercial shipment will result in little, if any, cost to US forces. If military cargo aircraft (C-5 or C-141) are used, the operating costs would be higher. Added to these would be the costs of tanker operation if in-flight refueling is used. In the event of an emergency involving the cargo plane, a tanker, or both, the United States would respond with costs running $350,000 to $700,000 or more. The Japanese would be expected to pay all the quantifiable costs for the use of US military assets.

6. Impact on US Military Readiness.—Since the duration of the flight would be short (about 12-16 hours) and the likelihood of any problems very low, any adverse impact would be of limited duration and manageable. Only in the unlikely event an emergency occurred during a shipment would there be any adverse impact on the mission readiness of US units for the first two alternatives. For Alternatives III and IV, where military aircraft and refueling resources might be used, there would be an adverse impact on military readiness. Either alternative would divert a major military cargo plane and crew from its primary military mission for several days for each mission. Moreover, Alternative IV would require the availability of an Air Force tanker and crew. US Air Force tanker assets are scarce and play a critical role in US strategic response capabilities. Employing either alternative would have an adverse impact on US military readiness and would require further evaluation within the Department of Defense.

7. Air Transportation Alternatives.—Alternatives for shipment of plutonium by air include: (a) the near-term feasibility of nonstop flights of civilian cargo aircraft; (b) civilian cargo aircraft refueling on the ground; (c) military cargo aircraft refueling on the ground; and (d) military cargo aircraft with in-flight refueling. The particulars of each alternative are discussed below:

a. Alternative I—Civilian Cargo Aircraft (Non-Stop).—Assuming an appropriate cargo aircraft were available, a non-stop flight from Europe to Japan would be an extremely safe and secure alternative for transporting plutonium. While no such aircraft currently exists, contact with Boeing experts indicates a cargo version of the Boeing 747-400 extended-range passenger plane, with a range of well over 7,000 nautical miles, should be available within the near future. Moreover, Boeing Company representatives indicate at least two airlines have ordered the large, long-range cargo variant of the aircraft capable of performing the mission for delivery in March 1989. The purchase price of the Boeing 747-400 will be approx. $125 million, although the Japanese will be able to charter such a plane for much less. There are other options as well, including refurbishing an existing 747 cargo plane with the most modern, fuel-efficient engines and additional fuel capacity.

b. Alternative II—Civilian Cargo Aircraft (Ground Refueling).—The next best transportation mode would also use dedicated commercial cargo planes flying the polar route. The difference is that the plane would be refueled on the ground. (While in-flight refueling of a civilian cargo plane is possible, it is unacceptable to the Department of Defense in view of the safety risks and adverse impact on military readiness.) Assuming current air cargo range capability and to ensure an adequate fuel reserve, the aircraft would have to refuel en route. Any refueling stop complicates somewhat the transportation and physical security problems. To ensure security on the ground, refueling could be done at a military facility in Alaska. These facilities include: (a) Galena AFB; (b) Shemya AFB; (c) Adak NAS; (d) Eielson AFB; and (e) Elmendorf AFB. Although the initial leg would be over 600-800 NM farther than landing at Eielson, Elmendorf, or Galena, refueling at either Shemya or Adak could avoid over flying mainland North America. Moreover, while both Shemya and Adak have outstanding safety records, periodic bad weather conditions would require backup options to refuel on the mainland. Galena AFB, with excellent facilities and consistency good flying weather, is lcoated in north central Alaska, far from any population centers, and would be an ideal refueling airfield.

C. Alternative III—Military Cargo Aircraft (Ground Refueling).—The third alternative mode is to use military cargo planes (C-5 or C-141) to transport the plutonium via the polar route. (French or British cargo planes might also be used.) The operating costs for military cargo aircraft are high; nearly $600,000 for a C-5 and over $225,000 for a C-141. (Opeating costs for French or British planes are probably comparable.) The Japanese would also have to pay to get the plane from its operational base to the point of departure, and back to base after completing the mission. Refueling could be accomplished at military facilities along the route. As with civilian cargo planes, the primary threat to military cargo aircraft would continue to be sabotage, especially from terrorists using anti-air missiles during takeoff and landings. The security protection for military transportation of plutonium would be more than adequate. The miltiary would have to verify security precautions on the ground at the points of origin and delivery, probably insisting upon using military airfields at each end. This alternative could have an adverse impact upon US miltiary readiness by diverting a major military cargo plane and crew from its primary military mission for several days for each mission.

d. Alternative IV—Military Cargo Aircraft (In-Flight Refueling).—The fourth alterna-

tive is to use US military cargo planes to transport the plutonium via the polar route. Refueling would be accomplished by in-flight refueling from a KC-135 or KC-10 tanker en route. In addition to the normal operating costs listed in Alternative III, in-flight refueling would add about $40,000 pertrip in tanker costs. In-flight refueling raises the possibility of a mid-air accident. Even with highly trained personnel and fully tested equipment, mid-air refueling operations, although routine, are considered "not safe" and are undertaken only when essential to a military mission. This increased risk is only nominally offset by eliminating the slight risks of accident or terrorist attack during an additional takeoff and landing necessary for a ground refueling operation.

8. Additional Comments.—Civilian air transportation over the polar route is cost-effective, is environmentally sound, provides a high level of safety, and, with proper precautions, ensures adequate security with little adverse impact on miltiary readiness. Before the Department of Defense could provide military assets, however, the Joint Staff and Services would have to study the matter in detail.

SEA TRANSPORTATION ALTERNATIVES

1. Introduction.—Sea transportation is another possible mode. There is precedent for this sea shipment method. In the later half of 1984 the United States approved the shipment of 253 kilograms of plutonium from France to Japan aboard a dedicated, specially prepared cargo vessel. The United States, France, and Japan coordinated escort services to protect the cargo ship for much of the trip. The logistical problems were significant and there was an adverse impact on military readiness to ensure adequate security protection for that shipment. Indeed, following the 1984 experience, the Department of Defense felt that sea shipment was not the preferred permanent solution to the problem. This discussion will focus first on concerns common to all of the sea alternatives and then turn to the specifics of each.

2. Possible Routes.—There are several possible routes for sea shipment. These include: (a) across the Atlantic, through the Panama Canal, and across the North Pacific to Japan (the route used in 1984); (b) across the Mediterranean Sea, through the Suez Canal, across the Indian Ocean, and north to Japan; (c) across the Atlantic, around South America, and on to Japan across the Pacific; and (d) around South Africa, across the Indian Ocean, and on to Japan. The latter two routes, despite their increased distance, have the advantage of avoiding "choke points."

3. Threat Assessment.—There are several basic problems with any sea shipment modality. First, in contrast to the high level of security associated with airports, normal civil port security is notably lax. Of course, every effort would be made to provide the most secure sea transshipment point available, perhaps even utilizing naval bases. Moreover, France or Britain would be responsible for port security until the vessel is well underway and Japan would be responsible once the ship arrived in Japan. Nevertheless, port security could be a significant concern. Under some conditions, it would be difficult to keep the details of the voyage secret and to protect the vessel while in port. Second, sea shipment is slow, with the total transit time between 35 and 75 days. Third, the vessel is accessible and vulnerable throughout the voyage, particularly when the vessel is passing through channels, straits, and other restricted waterways ("choke points"), or when it is near the coast. Special precautions would need to be taken at all vulnerable points. Fourth, a vessel would make a more attractive target than an aircraft flying a polar route to a terrorist group. Armed escorts and other security measures would need to be taken to deter and defeat any terrorist threat. Fifth, since a ship has a larger crew and the time of the voyage is much longer, greater efforts would be required to guarantee crew security Disaffected or disloyal crew members could attempt to sabotage the cargo or ship. Under inducement or coercion such crew members could assist outside terrorists to try to board and hijack the vessel or sabotage the cargo. Moreover, unless adequate response forces were available in the immediate area to deter and defeat such an effort, hijackers might well succeed by transferring the material to another vessel or diverting the ship to a "friendly" port. Properly secured, removal or transfer of the cargo to another vessel while the ship is underway would be quite difficult. However, with enough time and equipment, it could be done.

4. Adequacy of Physical Security Protection.—To enhance the security of surface shipment by civilian cargo vessel, various steps are essential. A reasonable baseline standard is the security package applied to the 1984 shipment. In that case the United States approved the shipment of plutonium from France to Japan aboard a dedicated, specially prepared cargo vessel. France, the United States, and Japan provided a combatant ship escort and other security services for much of the trip. Essential security precautions include: (a) maintaining secrecy of the route, date and time of departure and arrival, and the nature of the cargo; (b) modifying the ship to make removal of the plutonium at sea more difficult; (c) assigning independent and specially trained security personnel; (d) installing weapons and other equipment to defend the craft and cargo against terrorists and other threats; (e) conducting background investigations of all crew and security team members; (f) maintaining real-time, redundant communications to monitor the location and security status of the vessel for the voyage; (g) providing continuous backup support for the vessel by military security assets; and (h) providing sufficient fuel capacity to permit the completion of the voyage with no intermediate stops.

The Department of Defense believes that to adequately "deter" theft or sabotage, it would be necessary to provide a dedicated surface combatant to escort the vessel throughout the trip. While rapid response by long-range military aircraft is possible in some contingencies, the ability to deter or interdict a terrorist act from the air is limited. Whether France or the United Kingdom would be willing to provide naval escort services all the way to Japan, or within 1,000 miles of Japan before turning over escort responsibility to the Japanese, is undetermined. The 1984 experience might provide an acceptable model to divide escort responsibility during the course of the voyage. Finally, even if the most careful precautions are observed, no one could guarantee the safety of the cargo from a security incident, such as an attack on the vessel by small, fast craft, especially if armed with modern anti-ship missiles. Adequate security measures, however, could ensure that nothing short of an effort by a major naval power could divert the ship or acquire the cargo. In any case, the Department of Defense would have to carefully scrutinize any security plans to ensure they are adequate to deter attack and protect the plutonium.

5. Costs and How They Should Be Allocated.—Under the agreement, Japan woud bear all the identifiable security-related costs. These would include extensive modifications to the ship, such as extra fuel capability and self-defense weapons, and other special equipment to meet the requirements discussed above. The costs to the U.S. Government would be to monitor, inspect, and certify security procedures are adequate to the degree of risk. The Japanese would also pay for the normal shipping costs, fuel, other provisions, and crew costs, totaling between $900,000 and $1.4 million per voyage. In addition, the Japanese would be expected to bear all the quantifiable costs of having the U.S. naval forces ready to respond to a crisis involving the ship, such as an attack or a hijacking attempt at sea, as well as the cost of contingency response forces to deter any such attack during a transit of any choke points. Such preparation would be expensive, especially where military assets would have to be prepositioned to ensure rapid response. If a U.S., French, or British Navy or Coast Guard vessel (or any combination of these) provided the escort services, additional costs could exceed $2.8 million for the voyage. Moreover, reimbursement for all U.S. costs would be required for the entire period the escort vessel was diverted from its primary operational area.

6. Impact on U.S. Military Readiness.—Surface transportation would have an adverse impact on U.S. military readiness. Depending on the route, several CINCs, their staffs, and some of their units would have to divert planning resources and emergency response assets from their primary mission responsibilities to ensuring the protection of this ship over a period of 6 to 10 weeks for each voyage. The U.S. military would have to ensure an adequate response capability to cover a wide variety of contingencies. Military units would have to be prepared to respond to any crisis with minimal notice. The expense and the impact upon naval missions if the U.S. Navy were to assign a surface combatant to accompany the cargo ship would be significant, since such an escort ship would be unavailable for other military missions. Finally, if there were any attempt to seize or sabotage the vessel or its cargo, the adverse impact and expense would go up dramatically as the United States took action to protect and, if necessary, recover the crew, vessel, and cargo.

7. Sea Transportation Alternatives.—Alternatives for shipment of plutonium by sea include: (a) civilian cargo vessel without escort; (b) civilian cargo vessel with US Government escort; (c) civilian cargo vessel with foreign escort; and (d) military cargo vessel without escort. The particulars of each alternative are discussed below:

a. Alternative V—Civilian Cargo Vessel (Without Escort).—The first sea transportation alternative is to ship the material by sea on a civilian cargo vessel without escort. To maximize security, the Japanese would be expected to take all of the steps discussed in paragraph 4 above. This would include extensive modifications to the vessel's security and other equipment to meet the special needs. The Japanese would also pay for the normal shipping costs, fuel, provisions, and pay for the crew at a total cost of approx. $1.2 million per trip. The Department of Defense believes these steps might

not adequately "deter" a terrorist incident and ensure the security of the shipment. While this would be the least expensive sea transportation alternative, if there was an incident, the costs and impact on military readiness would go up dramatically. More significantly, the security of the plutonium cargo could be in jeopardy, with all the enormous risks which that entails.

b. Alternative VI—Civilian Cargo Vessel (With US Government Escort.—A more secure sea transport alternative is to ship the material by sea on a dedicated civilian cargo vessel with a US Navy or Coast Guard escort. Again, the Japanese would be expected to modify the vessel to comport with the security requirements discussed above. In addition to the costs of operating the civilian cargo vessel, they would bear all the quantifiable costs of having the US Navy or Coast Guard vessel accompany the cargo ship. If a US Navy ship were to escort the civilian vessel, costs would run about $45,000 per day, which would add between $1.8 and $2.8 million for each voyage. A US Coast Guard vessel would cost somewhat less, about $16,200 per day, due to its smaller crew size, for a total of between $650,000 to $1.1 million. Moreover, use of a Coast Guard vessel would impose a far lower impact on military readiness. (Coast Guard vessels, while not part of the peacetime Navy, are important mobilization assets.) Whether the United States can best utilize its limited Coast Guard resources in this manner, however, needs to be evaluated, given the increasing demands being made in the areas of drug interdiction, fishery management, and illegal immigration. Moreover, while the Coast Guard indicates it is willing and able to perform the mission if assigned, the two crucial elements to any Coast Guard participation are availability and complete financial reimbursement.

c. Alternative VII—Civilian Cargo Vessel (Foreign Escort).—Yet another alternative is for the French or British navies, or Japanese Military Safety Agency, to provide some or all of the escort services. This alternative has two advantages: it places primary security responsibility with those countries most directly involved in the shipments; and it provides adequate protection. However, there are several problems. First, the employment of a British or French frigate would detract directly from their regional commitments in Europe, perhaps requiring the United States to assume greater naval responsibilities there. Second, whether France or the United Kingdom would be willing to provide naval escort services all the way to Japan, or to within 1000 miles of Japan before relinquishing escort responsibility to the Japanese, is undetermined. It could have an adverse impact on their military flexibility. Third, there are major logistical problems associated with such a mission. An escort vessel would need to be refueled and replenished in both directions. The total costs for such a naval escort operation could be in excess of $2.8 million or more per mission. Finally, the United States would still need to be ready to respond to any incident which might take place during the voyage, impacting adversely on US military readiness. Pursuit of this alternative would require discussions through diplomatic channels with the British, French, and Japanese.

d. Alternative VIII—Military Cargo Vessel.—The final transportation alternative is using US naval cargo vessels to transport the plutonium from Europe to Japan. (French or British military cargo vessels, if available, might also be used.) With modifications, several different types of ships could carry such a cargo. The only time that the plutonium would be at any real risk of theft or sabotage would be during the port transfer process before it is loaded or after it has been off-loaded. While protesters could obstruct the ship in restricted waters or a terrorist craft could even damage the ship with rocket-propelled grenades or antiship missiles, nothing short of a major naval power could divert the ship or acquire the cargo. The key question is whether security would be adequate at the transshipment ports. The cost of using a naval cargo vessel would be quite high. Japan would have to pay industrial rates for such transportation, recompensing the United States for fuel, wages of the officers and men, consumables, and other expenses. For an ammunition replenishment vessel (AE or AOE), total costs could be over $2.8 million for a 35-day voyage. A dedicated Military Sealift Command (MSC) vessel, because of a much smaller crew, would cost only about $1.4 million. Japan would also have to pay for the ship's return to its area of operations, perhaps doubling the total costs. Costs of other emergency response requirements discussed above would be largely eliminated since such ships could provide their own defense against most threats. The fundamental problem involves diverting military units from their primary missions. Using naval vessels in this manner would have an adverse impact upon US military readiness, diverting a major replenishment ship or logistical support vessel from its primary mission for as much as ten weeks each shipment.

8. Additional Comments.—As in the 1984 sea shipment, security for the voyage could be provided through a combined effort by those nations concerned and the United States. The operational impact of any of these alternatives is such that the Department of Defense would have to study in detail if any sea shipment alternative were contemplated seriously. While sea shipment provides a possible modality, in the opinion of the Department fo Defense, any sea alternatives should be pursued only if air alternatives are not available.●

GENERAL DYNAMICS LIKES NAVAJO PRODUCTIVITY

● Mr. DOMENICI. Mr. President, I am most pleased to bring the attention of my colleagues to an item in this week's Business Week magazine. In a full-page advertisement, General Dynamics, a company with a 20-year history of operations on the Navajo Nation, proudly announces to the public its decision to open a second plant on Navajo land. This new plant will employ 200 more Navajo workers.

The ad is brief but powerful. It features a beautiful photograph of Navajo desert and mesas. The few words in the ad speak volumes about the successful "Navajo Means Business!" program. Chairman Peter MacDonald and the tribal government conceived this important and historic notion for Indian reservations, and the Navajo Nation is now busy implementing its new attitude toward American enterprise.

A little more than a year ago, several of my distinguished colleagues in the Senate, Mr. DECONCINI, Mr. INOUYE, Mr. MCCAIN, and Mr. BINGAMAN, joined Chairman MacDonald and me at the Navajo Economic Summit in Tohatchi, NM. This summit brought leaders of government and the private sector together to discuss how the Navajo people could package their natural economic advantages—locations, resources and talented work force—to become one of the most hospitable business climates in the free world.

Mr. President, I think this superb statement by General Dynamics demonstrates once again that the Navajo industrial development effort under Chairman MacDonald's leadership is an early and shining success. Since the summit in Tohatchi, a manufactured housing corporation and an agribusiness enterprise have joined General Dynamics in choosing the Navajo Nation as a location. The willingness of these new Navajo businesses to work with the Navajo leadership to create hundreds of new jobs on our Nation's largest Indian reservation will be rewarded for many years to come.

I ask that the General Dynamics ad be printed in the RECORD.

The ad follows:

AD—GENERAL DYNAMICS

This is some of the most productive land in the country. It is Dinetah, The Land of The People, the Navajo People. It is wild and beautiful. And harsh.

Growing corn in this land also grows character in The People. They know about husbanding resources carefully, and about hard work. Their skilled hands make beautiful rugs and jewelry.

They also make intricate electronic assemblies.

About 400 Navajo workers and managers in Fort Defiance, Arizona, are building upon a partnership with General Dynamics that stretches back twenty years.

Year after year, our Navajo-made electronics have proven to be first-rate. Our Navajo workers have proven to be able and dedicated. And our Navajo plant has proven to be profitable, for us and for the Navajos.

In 1989 we will open our second plant on Navajo land, employing nearly 200 more Native American workers. The land of the Navajo may look wild and harsh.

But for business, it is some of the most productive land in the country.—General Dynamics, A Strong Company For A Strong Country.●

TIME AGREEMENT ON THE NOMINATION OF LAURO F. CAVAZOS

Mr. BYRD. Mr. President, as in executive session, I inquire of the distinguished Republican leader if he would be in a position to agree to a time limitation for debate on the nomination of Lauro F. Cavazos, of Texas, to be Secretary of Education, 30 minutes equally divided between Mr. KENNEDY and Mr. HATCH, to be taken up at 10:30 a.m. on Tuesday next, and a vote at 11 a.m.

Mr. DOLE. If the majority leader will yield, we have cleared that on this side. We appreciate the willingness to bring that up on Tuesday at that time. It is most satisfactory.

Mr. BYRD. Very well. I thank the leader.

UNANIMOUS-CONSENT AGREEMENT REGARDING THE LAURO F. CAVAZOS NOMINATION

Mr. BYRD. Mr. President, as in executive session, I ask unanimous consent that on next Tuesday the Senate go into executive session at the hour of 10:30 a.m.; that the Senate immediately proceed to the consideration of Calendar Order No. 861 on the Executive Calendar; that there be a time limitation of 30 minutes on the nomination; that that time be equally divided between Mr. KENNEDY and Mr. HATCH; that at the hour of 11 a.m. on Tuesday, September 20, the vote occur on the nomination; that it be a 15-minute rollcall vote with the call of the regular order to be automatic; that upon the completion of that vote the motion to reconsider be laid on the table; that the President be immediately notified of the confirmation in the event the nominee is confirmed—of which I have no doubt; and that the Senate return to legislative session without further debate, and resume consideration of the minimum wage bill.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent, as in executive session, that it be in order to order the yeas and nays on the nomination of Lauro F. Cavazos, of Texas, to be Secretary of Education.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

UNANIMOUS CONSENT AGREEMENT—H.R. 2046

Mr. BYRD. Mr. President, I ask unanimous consent that the majority leader, after consultation with the minority leader, may proceed to the consideration of Calendar Order No. 934, H.R. 2046, an act to authorize the Secretary of State to conclude agreements with the Mexican Government to correct pollution of the Rio Grande, and that it be considered under a 10-minute time limitation equally divided and controlled between the leaders, or their designees, with no amendments, no motions, and no points of order in order.

The PRESIDING OFFICER. Is there objection to the request? Hearing none, it is so ordered.

H.R. 3408 HELD AT THE DESK

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 3408, just received from the House, be held at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

SENSE OF THE CONGRESS CONCERNING THE 1988 SEOUL OLYMPIC GAMES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 348 just received from the House.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 348) expressing the sense of the Congress concerning the 1988 Seoul Olympic Games.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to the consideration of the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 348) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FINANCE COMMITTEE AMENDMENT TO THE TECHNICAL CORRECTIONS TAX BILL

Mr. BYRD. Mr. President, I ask unanimous consent that the Finance Committee amendment to the technical corrections tax bill (S. 2238) be printed in the RECORD today, and as an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under Amendments Submitted.)

Mr. BAUCUS. Mr. President, on Thursday, September 8, the Committee on Finance approved a committee amendment to S. 2238, the Technical Corrections Act of 1988. The amendment was included in the RECORD of September 12—beginning at page S. 12326, as an attachment to my statement. I ask unanimous consent that the committee amendment, as modified to correct clerical and technical drafting errors, be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BYRD. Mr. President, I inquire of the able Republican leader if the following calendar orders have been cleared on the calendar of business: Calendar Orders Nos. 931, 932, 933, and 935.

Mr. DOLE. Each of those has been cleared on this side.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration seratim of those calendar orders.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXPRESSING SUPPORT FOR THE DALAI LAMA AND HIS PROPOSALS FOR TIBET

The concurrent resolution (S. Con. Res. 129) expressing the support of the Congress for the Dalai Lama and his proposal to promote peace, protect the environment, and gain democracy for the people of Tibet, was considered and agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 129

Resolved by the Senate (the House of Represenatatives concurring),

SECTION 1. FINDINGS.

The Congress makes the following findings:

(1) The Congress has previously expressed its concern regarding the policies of the People's Republic of China in Tibet, including the violation of Tibetan human rights, and has called on the Chinese Government to ameliorate the situation.

(2) The Dalai Lama presented a five-point peace plan for the restoration of peace and human rights in Tibet during his visit to the Congress in September 1987. This peace plan has received considerable international support.

(3) The Dalai Lama has now prepared a proposal for a democractic system of government for the people of Tibet founded on law, by agreement of the people of Tibet, for the common good and protection of themselves and their environment.

(4) The proposal of the Dalai Lama recognizes that the primary responsibility for the conduct of the foreign affairs, and the exclusive responsibility for the defense, of Tibet will remain with the Government of the People's Republic of China, in order to fulfill its defense responsibility, will be permitted to maintain a restricted number of military bases in Tibet, but these bases must be located away from population centers.

(5) The proposal of the Dalai Lama contains important measures to ensure and enhance the human rights of the Tibetan people to include the following:

(A) Specific steps will be taken to fulfill the goal of transforming the Tibetan plateau into a peace sanctuary. These steps in-

clude convening a regional security conference to determine ways to reduce regional tensions and eventually to demilitarize the Tibetan plateau and bordering regions.

(B) Tibet will be founded on a constitution, or basic law, which will provide for a democratic form of government, with an independent judiciary, and a popularly elected chief executive and legislative assembly. The basic law will contain a bill of rights which will guarantee individual human rights and democratic freedoms as expressed in the Universal Declaration of Human Rights.

(C) The basic law of Tibet will ensure the protection of the natural resources of the plateau by requiring the passage of strict laws to protect wild life and plant life and by effectively converting almost the entire area of Tibet into national park lands or biospheres.

(D) During an interim period, following the signing of an agreement based on the proposal, Tibet will be governed according to a transitional agreement providing for a gradual reorganization of the adminstration of Tibet, the restoration of human rights to Tibetans, and the return of the People's Republic of China of Chinese recently settled through inducement and involuntary placement by the People's Republic of China in Tibet.

(E) In order to create an atmosphere of trust conducive to fruitful discussions, the Government of the People's Republic of China should respect the human rights of the people of Tibet and not engage in a policy of transferring Chinese persons to Tibet.

(F) Before ratification of any agreement, the proposal will be submitted to the Tibetan people in a popular referendum.

(6) The Dalai Lama has asked the Government of the People's Republic of China and other concerned governments to study carefully, and respond constructively to, the substance of the proposal.

SEC. 2. EXPRESSION OF CONGRESSIONAL SUPPORT FOR THE DALAI LAMA AND HIS PROPOSAL FOR TIBETAN DEMOCRACY.

The Congress—

(1) commends the Dalai Lama for his past efforts to resolve the problems of Tibet through negotiation with the People's Republic of China, and for dissuading the Tibetan people from using violence to regain their freedom;

(2) commends the Dalai Lama for his new proposal in his continued quest for peace, and expresses its support for the trust of his proposal;

(3) calls on the leaders and the Government of the People's Republic of China to respond positively to the proposal of the Dalai Lama, and to enter into earnest discussions with the Dalai Lama, or his representatives, to resolve the question of Tibet along the lines proposed by the Dalai Lama; and

(4) calls on the President and the Secretary of State to express the support of the United States Government for the thrust of the proposal of the Dalai Lama, and to use their best efforts to persuade the leaders and the Government of the People's Republic of China to enter into discussions with the Dalai Lama, or his representatives, regarding the proposal of the Dalai Lama and the question of Tibet.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

ANNIVERSARY OF THE CAMP DAVID ACCORDS

The Senate proceeded to consider concurrent resolution (S. Con. Res. 142) congratulating Israel and Egypt on the 10th anniversary of the Camp David accords.

Mr. BOSCHWITZ. Mr. President, I ask unanimous consent that Senator WEICKER be added as a cosponsor of Senate Concurrent Resolution 142.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOSCHWITZ. Mr. President, I was very pleased to submit this concurrent resolution and was honored to have the distinguished chairman of the Foreign Relations Committee, Senator PELL, and 33 other colleagues join as cosponsors. It is fitting and appropriate for the Senate to note the 10th anniversary of a landmark event by any standard, the signing of the Camp David accords. Signed on September 17, 1978, the accords marked a triumph of will and courage by three leaders of vision: Menachem Begin of Israel, Anwar al-Sadat of Egypt, and Jimmy Carter of the United States.

The Camp David accords have served as the foundation of peace between Israel and Egypt. A decade later, the peace between Israel and Egypt still persists, ending a generation of war between them. The accords stand as a beacon and as clear evidence of what can be accomplished through the diligence and persistence of national leaders committed to the peaceful resolution of conflict. To achieve the peace took acts of great courage. President Sadat journeyed to Jerusalem, breaking a psychological and physical barrier that changed the way people for decades had viewed the Arab-Israeli conflict. Prime Minister Begin reciprocated this act by proposing the return of the entire Sanai Peninsula, an oil-rich area twice the size of Israel. Together, they paved the path to peace.

These two men were then called to Camp David, where for 12 days, President Carter brought them together to negotiate the Camp David accords—a comprehensive plan to bring peace to the region. The accords laid out a blueprint to provide for Israel's security, and to resolve the Palestinian problem "in all its aspects." It called for negotiations by the parties to the conflict, including the Palestinians, that would decide final borders, make security arrangements, and over a 5-year transition period, settle the final status of the West Bank and the Gaza Strip. Through these negotiations, the "legitimate rights of the Palestinian people" would be recognized.

Unfortunately, the other parties to the conflict have yet to see the wisdom that was charted in the Camp David accords. The region remains in turmoil and negotiations remain untested. Had others joined in the peace process, years of violence could have been avoided and the current Palestinian uprising might never have occurred. Even today, Palestinian and other Arab leaders continue to reject the clearest and straightest way to resolve the conflict: recognition of Israel's right to exist, followed by direct negotiations with Israel.

Nevertheless, I am convinced that some day, hopefully soon, such negotiations will occur. And the Camp David accords with provide the example and the direction for the inevitable turn to peace that is essential to all the inhabitants of the region.

The concurrent resolution was agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 142

Whereas September 17, 1988, marks the tenth anniversary of the Camp David accords between Israel and Egypt;

Whereas those accords provided a framework for peace between Israel and Egypt that stands as a landmark, ending a generation of war and violence;

Whereas the accords have proven to be an enduring achievement, furthering the interests of peace and stability in a volatile region of the world;

Whereas the accords were made possible through the courageous acts of Egyptian President Anwar al-Sadat, in his brave trip to Jerusalem, and of Israeli Prime Minister Menachem Begin, in his willingness to propose the return of the entire Sinai Peninsula, an oil-rich area twice the size of Israel; and through the diligence and persistence of President Jimmy Carter, who brought the two men together at Camp David;

Whereas the Camp David accords are based on United Nations Security Council Resolution 242 and 238, the only internationally recognized and accepted bases for the establishment of peace between Israel and her Arab neighbors;

Whereas the United States Government has proudly supported the participants of this historic agreement, Israel and Egypt, throughout this decade of peace between them;

Whereas direct bilaterial negotiations, as conducted in the Camp David accords, are the most effective way to resolve the Arab-Israeli conflict;

Whereas the other parties to the conflict have been unwilling to enter into direct bilateral negotiations but continue to maintain a state of war against Israel; and

Whereas the perpetuation of the conflict has exacted a terrible cost in human lives and human suffering for both Israelis and Arabs: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) congratulates Israel and Egypt for a decade of peace based on the Camp David accords; and

(2) calls upon other Arab States and Palestinians to follow the example of Israel and Egypt, to join in the peace process, to renounce the state of war and acts of violence, and to enter into direct negotiations with Israel to achieve a just and lasting peace.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. DOLE I move to lay that motion on the table.

USE OF THE CATHEDRAL IN VILNIUS, LITHUANIA, BY THE SOVIET UNION

The resolution (S. Res. 385) expressing the opposition of the Senate to the continued control of the cathedral in Vilnius, Lithuania, by the Union of Soviet Socialist Republics, was considered, and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 385

Whereas 1988 is the 600th anniversary of the erection of the cathedral in Vilnius, Lithuania;

Whereas the site on which the Vilnius Cathedral stands was once the location of a pagan temple and has served for centuries as the symbolic center of religious life for the people of Lithuania;

Whereas the founding and erection of the Vilnius Cathedral is closely related to the conversion of Lithuania from paganism to Christianity in 1387, and the Vilnius Cathedral is called the "cradle of Lithuania Christianity";

Whereas the Vilnius Cathedral is both a religious and a national shrine, and the remains of prominent religious and secular rulers of Lithuania have been interred in the cathedral, including the remains of the patron saint of Lithuania, Casimir, and the greatest ruler of Lithuania, Grand Duke Vytautas;

Whereas, despite numerous natural and man-made disasters that caused the partial or complete destruction of the Vilnius Cathedral, the religious faithful in Lithuania always rebuilt it;

Whereas the Soviet Army invaded Lithuania in June 1940, and the Soviet Government incorporated Lithuania into the Union of Soviet Socialist Republics;

Whereas the Soviet Government nationalized church property in Lithuania, seized scores of churches, and converted them to other uses against the wishes of the Roman Catholic community in Lithuania;

Whereas Soviet officials, over the protests of the Roman Catholic Church leadership in Lithuania, announced in 1950 that the Vilnius Cathedral would be transferred to Government control and transformed the cathedral into an art gallery in 1956;

Whereas the seizure and desecration of the Vilnius Cathedral by the Soviet Government violates the provisions on religious liberty contained in the Universal Declarations of Human Rights, the International Covenants on Human Rights, and the Final Act of the Conference on Security and Cooperation in Europe;

Whereas Roman Catholics in Lithuania have never reconciled themselves to the loss of the Vilnius Cathedral;

Whereas in 1985 the Lithuanian Christianity Jubilee Committee, led by Bishop Juozas Preiksas, applied to the Soviet Government for the return of the Vilnius Cathedral and two other churches as part of the 600th anniversary of the Christianization of Lithuania;

Whereas over the last few years hundreds of priests in Lithuania, including 60 percent of the priests in the Vilnius Arch-diocese, have publicly petitioned for the return of the Vilnius Cathedral; and

Whereas Soviet authorities have met such petitions with either silence or outright refusal: Now, therefore, be it

Resolved, That in observation of the 600th anniversary of the erection of the cathedral in Vilnius, Lithuania, the Senate—

(1) expresses its deepest concern over the refusal of the Government of the Union of Soviet Socialist Republics to return the Vilnius Cathedral to the control of the Roman Catholic Church;

(2) voices its support to the Lithuanian people in their efforts to secure—

(A) the return of the Vilnius Cathedral, and

(B) the right to exercise fundamental religious rights so long denied them;

(3) calls upon the President and the Secretary of State to—

(A) raise the issue of the return of the Vilnius Cathedral in meetings with Soviet officials, and

(B) direct representatives of the United States Government at international human rights forums to speak out forcefully for the return of the Vilnius Cathedral;

(4) strongly encourages Members of Congress who visit the Union of Soviet Socialist Republics to include the return of the Vilnius Cathedral on the agenda in discussions with Soviet officials; and

(5) urges the Soviet Government to—

(A) reverse its policy of denying to Roman Catholics in Lithuania the right to worship in the Vilnius Cathedral, and

(B) return the cathedral to Roman Catholic Church control before the end of 1988.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

RESTORATION OF FREEDOM AND INDEPENDENCE IN CAMBODIA

The Senate proceeded to consider the joint resolution (H.J. Res. 602) in support of the restoration of a free and independent Cambodia and the protection of the Cambodian people from a return to power by the genocidal Khmer Rouge.

Mr. HATFIELD. Mr. President, I am pleased that the Senate is providing some direction and leadership with respect to United States foreign policy in Southeast Asia as applied to the Khmer Rouge and Cambodia, and I applaud Senators KENNEDY and SIMPSON for the companion Senate measure, Senate Joint Resolution 347, which we introduced several months ago.

Yesterday I had in my office a gentleman whose agency, the U.N. Border Relief Operation [UNBRO], is one of the few, if not the only, organization with access to the Khmer Rouge camps. His account of what is happening in these scattered Khmer Rouge camps sounded reminiscent of the reports which came out of Cambodia during the years 1975–78 when the Khmer Rouge were systematically destroying Cambodia.

For some time I had been receiving reports from voluntary agencies working in and around Cambodia that the Khmer Rouge tactics were growing more and more coercive and dangerous, and that as soon as the sun set in the camps and the international relief teams went home, civilians were being turned into human mine detectors and arms transport teams. I have received August reports that tours of the Khmer Rouge camps by journalists and relief organization personnel are managed so as to preclude contact with civilians, evidencing the Khmer Rouge's culpability in crimes against camp civilians and their desire to cover these human rights violations up in the typical Khmer Rouge way—through intimidation, suppression, and as I have heard from time to time, summary executions.

Mr. President, we have to be frank about this. Ten years ago the Khmer Rouge were all but dead. But because of questionable regional strategies and the self-imposed silence of the American government, the Khmer Rouge beast was nursed back to health by Communist China, and now the resolution strategy for Cambodia has to deal with the fact that the Khmer Rouge are poised to return to their old ways of torturing and terrorizing the people of Cambodia.

Hard information is difficult to come by on what the Khmer Rouge are up to, but I have a translation of a Khmer Rouge document dated December 2, 1986, which was circulated in Khmer Rouge camps by the leadership there.

Let me quote from some of the passages of this document:

The past eight years have shown more and more clearly the goodness of Democratic Kampuchea . . . we definitely should not worry or have any doubts about our past performance . . . we built socialism in Kampuchea and we are now waging a people's war against Vietnam . . . during the reconstruction of the country we achieved a lot, considering it was only a short period of time . . . Our four year plan (77–88) was moving along nicely.

Mr. President, this kind of revision of their genocidal history bodes very poorly for current Cambodia resolution negotiations, and shames those countries using the Khmer Rouge as a pawn in the struggle to oust the Vietnamese. And let's be clear about this—to denounce the Khmer Rouge is not to support the Vietnamese occupation. Those who link these two wrongs cannot come up with a right for the Khmer Rouge to be prospering and powerful.

Mr. President, the fact is that the Khmer Rouge is unrepentant, and its undisguised desire to return to its murderous ways should wake up the conscience of the free world and unite

us in our attempt to dismantle this brutal regime. The international community can do this by putting the squeeze on China to stop arming the Khmer Rouge. And we can do this by giving the civilians in the Khmer Rouge camps an opportunity to relocate to another camp. They are prisoners in concentration camps, pure and simple, and we must liberate them.

So I applaud the thrust of this resolution, and urge the next administration to adopt a foreign policy toward Southest Asia which moves quickly toward an international effort to bring the Khmer Rouge to justice, and to strengthen the non-Communist coalition of Prince Sihanouk and Son Sann.

There will be a discussion soon in the United Nations, perhaps on October 5, on who represents Cambodia. Presently the United Nations recognizes the Khmer Rouge as a legitimate partner in the resistance government, and hopefully international attention will refocus on just what the Khmer Rouge movement seeks to do, and just what it did. I support this resolution and hope it serves as a springboard for future United States initiatives in the region with respect to Cambodia and to the victims of the Cambodia stalemate—the hundreds of thousands of refugees in the camps, and the millions of victimized civilians inside the country.

The joint resolution was ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. DOLE. I move to lay that motion on the table.

MR. GORBACHEV'S LATEST ARMS CONTROL PROPOSALS

Mr BYRD. Mr. President, the Soviet leader, Mr. Gorbachev, visited the site of the Soviet Union's major violation of the ABM Treaty, Krasnoyarsk, Siberia, and today made a number of proposals intended at putting the United States on the defensive on arms control.

A total of seven proposals, most of them one-sided and generally frivolous, were unveiled by the Soviet leader today.

He missed the opportunity, unfortunately, to announce that the Soviet Union was now prepared to tear down the giant radar facility located at that site, which has been found by a consensus of both the executive branch and the Congress, and on both sides of the aisle to be a major violation of the ABM Treaty.

As the Senate voted unanimously today on the bipartisan resolution, the future of strategic arms control agreements is clearly jeopardized so long as the Krasnoyarsk radar remains in place.

Instead, Mr. Gorbachev proposed that an international center on the peaceful use of outer space be created at the site of the radar. One could envision a number of sites more convenient to the Western powers, other than Siberia, for such a center. The United Nations is in New York, and is more convenient, in my judgment.

In any event, Mr. Gorbachev is an astute politician, and if his purpose is to be rewarded for removing a major violation of the ABM Treaty, I think he will be disappointed. It is a little like asking for the Nobel Peace Prize for removing his forces from Afghanistan, after engaging in a war of atrocities there for a decade. The Soviet Union ought to just tear down the radar, and we can all go on from there.

The Soviet leader, as I mentioned, has offered a number of other proposals which are intended to be taken as arms control proposals. They are not very impressive, and they lead one to doubt the seriousness of the Soviet leader's intentions as to reaching real accommodations with the United States at this time.

The first item is an invitation for the United States to give up its bases in the Philippines in return for which the Soviet Union will abandon its naval base at Cam Ranh Bay, Vietnam. This is totally one-sided, and frivolous. It should be summarily rejected and I hope it will be. The Soviet Union is a Pacific power—not necessarily a Pacific Ocean but Pacific power—its land mass is littoral to the Western Pacific, and it has a permanent fleet stationed in the Port of Vladivostok. It does not need Cam Ranh Bay to maintain a major naval presence and operate throughout the Pacific.

Vladivostok is the Soviet Union's largest naval complex. It is the headquarters of the Pacific Ocean Fleet and located on the Sea of Japan. It is the home port to more than 80 principal surface combat ships including a *Kiev* class aircraft carrier and 95 submarines. So it does not need Cam Ranh Bay to maintain a major naval presence and operate throughout the Pacific.

Cam Ranh Bay is a recent addition to the Soviet fleet, whereas the American bases in the Philippines are our primary facility in the Western Pacific, other than in Japan, and we are involved in negotiations with the Government of the Philippines at this time for their extension. This ploy is simply a way for the Soviets to stir the pot in what has been a difficult series of negotiations with that Government.

The proposal for making the Indian Ocean a zone of peace is a retreading of an old Soviet proposal designed to minimize United States naval presence in that region, while the Soviet engages in a major attempt to destabilize Pakistan and retain what control they can of Afghanistan. There is nothing new to this.

The remainder of the proposals—to not namely increase the amount of nuclear weapons in the Asia region, to freeze and lower he levels of naval and air forces, and to limit their activity—do not have much substance and are aimed at reducing United States influence as much as possible in a region where the Soviets exercise primary influence as a land-based power, and have very robust naval and air forces as well.

I hope the President will respond to these proposals quickly and challenge the Soviet leader to be more serious and forthcoming on arms control matters now, rather than floating what are quite obviously political gambits. If the Soviet leader wishes to be taken seriously in a quest for world peace, he will bring his country back into conformity with the ABM Treaty, and cease and desist from interfering in the internal affairs of Pakistan by promoting jet fighter attacks of that nation from Afghanistan, in a transparent attempt to destabilize the Pakistani political system at a very delicate time in the wake of President Zia's death.

RECORD TO REMAIN OPEN UNTIL 5 P.M.

Mr. BYRD. Mr. President, I ask unanimous consent that the RECORD remain open today until 5 o'clock p.m. for statements, introduction of legislation, and the reporting of executive and legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR MONDAY

RECESS UNTIL 9:30 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, its stand in recess until the hour of 9:30 a.m. on Monday next.

The PRESIDING OFFICER (Mr. ROCKEFELLER). Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order on Monday next, there be a period for morning business to extend until the hour of 10 o'clock a.m. and that Senators may by permitted to speak during that period for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, an order was entered on September 13, limiting time for debate on the United States-Canada Trade Agreement bill to 7½

hours, 1 hour of which is to be under the control of the Senator from Maine [Mr. MITCHELL], 30 minutes to be under the control of the Senator from Maine [Mr. COHEN], with a vote on final passage to begin at 5:30 p.m. and conclude at 6:30 p.m.

I ask unanimous consent that at the hour of 10 o'clock a.m. on Monday next the Senate proceed to the consideration of the United States-Canada Trade Agreement bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Therefore, Mr. President, with the Senate beginning the debate at 10 o'clock and with 7½ hours of debate, that would be correctly timed for a vote to begin at 5:30 p.m. No amendments are in order and Senators will be confined to simple yes or no vote on the bill.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes, I am happy to yield.

Mr. DOLE. As I have indicated in private discussions with the majority leader, that is the order. I have had one request on this side. I have been unable to reach that Senator in the past few minutes by telephone. If the rollcall vote starts at 5 p.m., that would be a 1½-hour rollcall vote. I understand the majority leader would like to accommodate this particular Senator, but I think others will be coming and going during that 1-hour period and that would extend the rollcall vote to 1½ hours.

Mr. BYRD. Mr. President, the distinguished Republican leader has brought to my attention the request, which comes from one of our colleagues on the other side of the aisle. I would like to accommodate the Senator by starting the vote at 5 o'clock p.m. The problem with that is that if we start it at 5 o'clock p.m. and end it at 6:30 p.m., we will have, for the first time, certainly, in a long, long time, a rollcall vote that extends for an hour and a half.

We occasionally extend the rollcall votes for 1 hour. I am concerned that if we now start extending rollcall votes beyond an hour we will have other requests from other Senators, some on my side of the aisle, as well as on the other, to extend a rollcall vote to 2 hours and more.

So I am constrained to have to decline to extend the vote to an hour and a half. On the other hand, if we started at 5 and concluded at 6, that would be 1 hour.

But, inasmuch as the notice has been printed in the RECORD and the request was gotten 3 days ago, many Senators may be counting on the vote to occur precisely as stated, 5:30 to 6:30, and they may not be planning on getting to the Senate on that particular day, for reasons of their own, before sometime between the hour of 6 o'clock or 6:30 or even the last 5 or 10 minutes of that 1-hour period. And with many Senators getting in on planes that do arrive late in the afternoon on Monday, I would be very hesitant to open up the agreement again.

Mr. DOLE. I thank the majority leader. It just occurred to me that we might be able to revisit it on Monday. The Senator will be here. If we should, say, complete debate at 5 o'clock and there is nothing else to do at 5 o'clock, maybe the Senator could make the request of the majority leader.

Mr. BYRD. Mr. President, that could very well be the case. In that situation, I would be happy to entertain the request that we begin the vote at 5 and close it out at 6. On Monday, we will take a new reading and see if any Senator would be discommoded by the change in the order. If they are not and the 6½ hours of debate could be constricted to 6 hours, I would have no problem with that at all. I would welcome the leader drawing my attention to the matter again on Monday.

Mr. DOLE. I thank the majority leader.

Mr. BYRD. I thank the Republican leader.

PROGRAM

Mr. BYRD. Mr. president, the Senate will recess over until Monday at 9:30 a.m., and following the recognition of the two leaders under the standing order there will be a period for morning business to extend until 10 o'clock a.m. Senators will be permitted to speak during that period for not to exceed 5 minutes each.

At 10 o'clock a.m., the Senate will proceed to the consideration of the United States-Canada Trade Agreement. There are 7½ hours of debate on that treaty, 1 hour of which is to be under the control of Mr. MITCHELL and 1 hour of which is to be under the control of Mr. COHEN. At the hour of 5:30 p.m. on Monday, the Senate will vote on the treaty. No amendments are in order to that agreement.

The vote will be a 1-hour rollcall vote and will close at no later than 6:30 p.m. I say no later because if all Senators who are present in the city have voted prior to the hour of 6:30, naturally there will be no need to continue until 6:30 p.m.

I have said heretofore that that will be the only rollcall vote that day. As far as I can see, that will be the only rollcall vote in the day. I say it that way because I have no intention to do otherwise and barring some unforeseen event, which as I say I cannot see right now but which could happen—for example, a call for the Sergeant at Arms to request the attendance of absent Senators and someone making that become a live quorum, and I do not think that would happen, but barring such an event, there will be only the one rollcall vote that day.

Upon the conclusion of the vote on the agreement, the Senate will resume consideration of the minimum wage bill. I hope that some votes can occur on amendments on Tuesday on the minimum wage bill. There will be a vote on the nomination of the new Secretary of Education on Tuesday at the hour of 11 o'clock a.m.

RECESS FROM 12:45 P.M. TO 2 P.M. TUESDAY

Mr. BYRD. I ask unanimous consent that on Tuesday there be a recess of the Senate to begin at the hour of 12:45 p.m. to extend until the hour of 2 p.m. to accommodate the two party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Following those conferences, hopefully some votes on amendments to the minimum wage bill will occur. I hope we can reach an agreement to limit amendments on that bill and to conclude action on the bill, if not on Tuesday, certainly at some point on Thursday next.

The Senate will be out on Wednesday to accommodate the religious holiday, Yom Kippur. There will be no session that day. I may or may not offer a cloture motion on Monday on the minimum wage bill. I will be discussing such matters with the Republican leader. If a cloture motion should be introduced on Monday on the minimum wage bill, that vote would mature on Thursday under the rule.

RECESS UNTIL MONDAY, SEPTEMBER 19, 1988 AT 9:30 A.M.

Mr. BYRD. Mr. President, there being no further business to come before the Senate, I move in accordance with the order previously entered that the Senate stand in recess until the hour of 9:30 on Monday morning next.

The motion was agreed to, and the Senate, at 4:58 p.m., recessed until Monday, September 19, 1988, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 16, 1988:

THE JUDICIARY

FERDINAND F. FERNANDEZ, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE WARREN J. FERGUSON, RETIRED.

DEPARTMENT OF STATE

JOHN CONDAYAN, OF VIRGINIA, TO BE DIRECTOR OF THE OFFICE OF FOREIGN MISSIONS, WITH THE RANK OF AMBASSADOR, VICE JAMES EDWARD NOLAN, JR.

IN THE FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER MINISTER:

EVERETT ELLIS BRIGGS, OF MAINE

ROBIE MARCUS HOOKER PALMER, OF VERMONT
EDWARD JOSEPH PERKINS, OF OREGON
J. STAPLETON ROY, OF PENNSYLVANIA
ROSCOE S. SUDDARTH, OF MARYLAND

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

DAVID RUSSELL BEALL, OF MICHIGAN
WILLIAM T. BREER, OF CALIFORNIA
GORDON S. BROWN, OF THE DISTRICT OF COLUMBIA
RICHARD C. BROWN, OF NEW MEXICO
JOHN A BURROUGHS, JR., OF CALIFORNIA
JAMES FORD COOPER, OF CALIFORNIA
JEFFREY DAVIDOW, OF MINNESOTA
JOHN S. DAVISON, OF MAINE
CLARK M. DITTMER, OF VIRGINIA
MICHAEL L. DURKEE, OF NEW YORK
WESLEY WILLIAM EGAN, JR., OF NORTH CAROLINA
CLARKE N. ELLIS, OF CALIFORNIA
GEORGE G.B. GRIFFIN, OF MARYLAND
PHILIP J. GRIFFIN, OF THE DISTRICT OF COLUMBIA
SCOTT S. HALLFORD, OF TENNESSEE
ROGER G. HARRISON, OF CALIFORNIA
H. KENNETH HILL, OF CALIFORNIA
JOSEPH S. HULINGS III, OF SOUTH CAROLINA
MARK JOHNSON, OF MONTANA
RALPH R. JOHNSON, OF WASHINGTON
PATRICK FRANCIS KENNEDY, OF ILLINOIS
PATRICIA A. LANGFORD, OF MISSISSIPPI
ALAN P. LARSON, OF IOWA
WAYNE STEPHEN LEININGER, OF FLORIDA
MARK C. LISSFELT, OF PENNSYLVANIA
WALTER A. LUNDY, OF VIRGINIA
JOHN F. MAISTO, OF PENNSYLVANIA
EDWARD M. MALLOY, OF NEW YORK
JIM D. MARK, OF GEORGIA
JAMES A. MATTSON, OF MINNESOTA
DONALD FLOYD MCCONVILLE, OF MINNESOTA
JAMES W. MCGUNNIGLE, OF NEW YORK
JOSEPH H. MELROSE, JR., OF PENNSYLVANIA
MARILYN ANN MEYERS, OF MINNESOTA
ROBERT J. MONTGOMERY, OF TEXAS
RALPH R. MOORE, OF MASSACHUSETTS
E. PARKS OLMON, OF TEXAS
ROBERT STEPHEN PASTORINO, OF CALIFORNIA
CHARLES E. REDMAN, OF INDIANA
H. CLARKE RODGERS, JR., OF GEORGIA
ANDREW D. SENS, OF THE DISTRICT OF COLUMBIA
DANIEL P. SERWER, OF TEXAS
FREDERICK H. SHEPPARD, OF OHIO
DAVID H. SHINN, OF WASHINGTON
DAVID H. SIMPSON, OF OHIO
NORMAN A. SINGER, OF ILLINOIS
JOHN TODD STEWART, OF CALIFORNIA
JAMES TARRANT, OF CALIFORNIA
PATRICK N. THEROS, OF THE DISTRICT OF COLUMBIA
JEROME F. TOLSON, JR., OF PENNSYLVANIA
EMIL VON ARX II, M.D., OF NEW HAMPSHIRE
EDWARD S. WALKER, JR., OF PENNSYLVANIA
JOHN STERN WOLF, OF MARYLAND

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE, AND CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE APPOINTMENTS, AS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

CHARLES S. AHLGREN, OF WEST VIRGINIA
L. STUART ALLAN, OF MISSISSIPPI
ROBERT D. AUSTIN, JR., OF WASHINGTON
JANICE FRIESEN BAY, OF CALIFORNIA
JOSEPH F. BECELIA, OF NEW YORK
JANE ELLEN BECKER, OF WISCONSIN
RANDOLPH M. BELL, OF ARKANSAS
PAUL H. BLAKEBURN, OF NEW HAMPSHIRE
J. RICHARD BOCK, OF WASHINGTON
MICHAEL A. BOORSTEIN, OF COLORADO
WILLIAM R. BREW, OF NEW JERSEY
DAVID G. BROWN, OF FLORIDA
EDWARD BRYNN, OF CALIFORNIA
ROGER E. BURGESS, JR., OF NEVADA
MARY ANN CASEY, OF COLORADO
JAMES L. CLUNAN, OF MAINE
JAMES K. CONNELL, OF CONNECTICUT
MICHAEL W. COTTER, OF THE DISTRICT OF COLUMBIA
WILLIAM HARRISON COURTNEY, OF WEST VIRGINA
EDWIN P. CUBBISON, OF FLORIDA
WILLIAM H. DAMERON, III, OF MARYLAND
CHARLES L. DARIS, OF CALIFORNIA
DAVID BRYAN DLOUHY, OF TEXAS
CRAIG G. DUNKERLEY, OF MASSACHUSETTS
MORTON R. DWORKEN, JR., OF OHIO
SAMUEL C. FORMOWITZ, OF VIRGINIA
EDWARD F. FUGIT, OF NEW JERSEY
DAVID N. GREENLEE, OF CALIFORNIA
ROBERT E. GRIBBIN, III, OF ALABAMA
WAYNE G. GRIFFITH, OF NEW JERSEY
ANNE M. HACKETT, OF CALIFORNIA
GEORGE H. HAINES, III, OF RHODE ISLAND
JAMES HENRY HALL, OF VIRGINIA
DAVID CRANE HALSTED, OF VERMONT
JAMES H. HOLMES, OF NEW YORK
DAVID TAYLOR JONES, OF PENNSYLVANIA
DOUGLAS HUGH JONES, OF CALIFORNIA
HARRY E. JONES, OF PENNSYLVANIA
M. GORDON JONES, OF CALIFORNIA
THEOFORE H. KATTOUF, OF FLORIDA
DOUGLAS R. KEENE, OF MASSACHUSETTS
ALLEN L. KEISWETTER, OF VIRGINIA
ROBERT H. KNICKMEYER, OF MISSOURI
DONALD B. KURSCH, OF NEW YORK
JOHN P. LEONARD, OF CONNECTICUT
MARK LORE, OF VIRGINIA
DAVID L. LYON, OF MARYLAND
ARTURO S. MACIAS, OF WISCONSIN
THOMAS G. MARTIN, OF ALABAMA
DONALD J. MCCONNELL, OF OHIO
MICHAEL JOHN MCLAUGHLIN, OF NEW YORK
JOHN P. MODDERNO, OF MARYLAND
ROBERT P. MYERS, JR., OF CALIFORNIA
JEREMY NICE, OF THE DISTRICT OF COLUMBIA
JOHN U. NIX, OF FLORIDA
ANNE WOODS PATTERSON, OF ARKANSAS
DONALD J. PLANTY, OF NEW YORK
MARK J. PLATT, OF CONNECTICUT
LAURENCE E. POPE, II, OF MAINE
DAVID P. RAWSON, OF OHIO
ARLENE RENDER, OF OHIO
FRANK E. RHINEHART, OF CALIFORNIA
MAX NEWTON ROBINSON, OF WASHINGTON
RAYMOND GORDON ROBINSON, OF NEW YORK
DENNIS A. SANDBERG, OF MINNESOTA
LOUIS B. WARREN, JR., OF NEW JERSEY
THOMAS M. WIDENHOUSE, OF MONTANA

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, AND CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

ROBERT L. CAFFREY, OF CALIFORNIA
WILLIAM D. CLARKE, OF MARYLAND
FREDERICK K. CROSHER, OF CALIFORNIA
PAUL H. GRUNDY, OF WASHINGTON
PHILIP D. GUTENSOHN, OF VIRGINIA
WILLIAM J. HUDSON, OF VIRGINIA
JAMES A. LOVELL II, OF MARYLAND
GEORGE LOWE, OF THE DISTRICT OF COLUMBIA
RUFUS D. PUTNEY, OF WEST VIRGINIA
HAROLD E. RINIER, OF OREGON
DAVID N. SPEES, OF TEXAS
JOSEPH W. TOUSSAINT, OF CALIFORNIA
THOMAS H. VALK, OF VIRGINIA
ALFRED J. VERRIER, JR., OF VIRGINIA
PETER A. WEST, OF WASHINGTON

WITHDRAWAL

Executive message, received September 16, 1988, transmitting the withdrawal of the following nomination from further Senate consideration:

THE JUDICIARY

BERNARD H. SIEGAN, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE WARREN J. FERGUSON, RETIRED, WHICH WAS SENT TO THE SENATE ON FEBRUARY 2, 1987.